A DIGEST,

OR,

AN ENTIRE NEW AND COMPLEAT BODY OF THE

LAW CONCERNING THE POOR,

FROM THE

EARLIEST PERIOD TO THE PRESENT TIME,

ARRANGED UNDER PROPER HEADS;

COMPRIZING

A GREAT NUMBER OF REPORTED CASES NOT TO BE FOUND IN ANY ONE WORK OF THIS KIND,

TOGETHER WITH

MANY OTHER DETERMINED CASES NEVER BEFORE PRINTED;

TAKEN FROM THE NOTES OF

HENRY DEALTRY, Esq.

CLERK OF THE RULES IN THE COURT OF KING'S BENCH.

By D. PRICHARD, Gent.

TO WHICH WILL BE ADDED,

A COPIOUS INDEX,

AND A TABLE OF THE CASES.

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M.DCC.XCI.

FUN CONCERNING THE BOOK

OF

V DICE?

TO THE HONOURABLE

GEORGE HARDINGE,

CHIEF-JUSTICE

OF THE

COUNTIES OF GLAMORGAN, BRECON, AND RADNOR.

SIR,

THOUGH DEDICATIONS ſeem out of *common* Uſe, yet it readily occurred to me, that, before a Work of mine ſhould be ſent forth into the World, it would require a better Sanction than that of a Name ſo obſcure as my own.

Your Contribution to this Work, as well as the Situation you hold in *our* SUPREME COURT OF JUDICATURE, ſoon pointed out the Perſon to whom I could moſt properly inſcribe it; I aſked your Permiſſion—you granted it—and I am encouraged by the Hope, that my Attempts to make the LAW RELATIVE TO THE POOR better underſtood, may be found, as far as they extend, uſeful to that Part of our Police.

The Ambition of being called an AUTHOR formed no Part of my Inducement to publiſh: in our County, as in many others, Attornies practiſe in the Quarter-Seſſions as Advocates: for my own Inſtruction, therefore, in the Courſe of ſuch Practice there, I arranged the following Work.—I found it *myſelf* of much Uſe, and the Expectation of making it uſeful to others, was *one* Reaſon that induced me to publiſh it; and when, as *another*, I give the Hope of *ſome* Benefit from Labours undertaken in the Courſe of that Profeſſion to which I am bred, I truſt I ſhall neither be thought preſumptuous nor unreaſonable.

With Reſpect and Gratitude,

I ſubſcribe myſelf,

SIR,

Your moſt obliged humble Servant,

Cardiff, May 5, 1791. D. PRICHARD.

TO THE PUBLIC.

LORD MANSFIELD has frequently declared, from the Bench, "That it is a melancholy Conſideration, that ſo many Queſtions ariſe on Settlement Caſes." A Conſideration *certainly* the more to be lamented, as it is known that all the Attempts hitherto made, though brought forward by great Characters, have been found inadequate to the Amendment of the preſent Syſtem of Law concerning the Poor.

IT can hardly be doubted but that many of theſe Queſtions, in the *inferior Courts*, muſt have been chiefly occaſioned by the want of Opportunities of being better acquainted with the Conſtructions put upon theſe Laws, by the Determinations of *ſuperior Courts*: but as this End is attainable in no other Way than by conſulting ſuch Determinations, which are, for the moſt part, blended with other Caſes, in voluminous Books of Reports, at leaſt *expenſive*, it not *unneceſſary*, in the Libraries of any others than Profeſſional-Men—a Selection of ſuch only as, together with the Statutes which more immediately concern this Subject, into one Book, appeared to me to be the moſt likely Way of overcoming this Inconvencience; eſpecially when theſe Statutes, and the ſeveral Deciſions pronounced upon them, are (*as in the following Work*) arranged under proper Heads, ſo as to be ſeen at one View.

THE Deciſions of late Years are certainly rendered peculiarly intereſting, by the Pains the JUDGES in *Weſtminſter Hall* have taken (*very much to the Public Advantage*) to leſſen the Number of theſe Queſtions, in eſtabliſhing for this Purpoſe, certain Rules or Principles of Conſtruction, ſo plain, ſimple, and clear, as need only to be conſulted to be underſtood.

I FEEL happy in this Opportunity of making my public Acknowledgements to HENRY DEALTRY, ESQ. *Clerk of the Rules in the Court of King's Bench*, for the very polite and friendly Manner in which he gave me the full Uſe of his Notes; which Circumſtance alone enabled me to offer the Public the *Manuſcript Caſes* contained in the following Work: and which, for my *own Credit*, I have tranſcribed with the utmoſt poſſible Care; as any Inaccuracies will certainly be rather imputable to *me*, than to *him*, whoſe Abilities and Accuracy are too well known to ſuffer from any Want of either which may appear in my Report of them.

AS I have ſpared neither Labour nor Attention in my Endeavours to make the following Work as *generally* uſeful as *my* Abilities would enable me—I preſume to hope, that it will be found much more comprehenſive and faithful than any one Work hitherto publiſhed on the Subject; yet I offer it to the Public Eye with all poſſible Diffidence, and under the fulleſt Conviction of a Want of thoſe Talents neceſſary to *ſecure* Encouragement; flattering myſelf only with the further Hope, that, from a generous and indulgent Public, I ſhall find that Countenance ever ſhewn to thoſe who *ſincerely* endeavour to ſerve them.

A NEW AND COMPLEAT BODY

OF

THE LAW

CONCERNING THE

POOR,

ARRANGED UNDER PROPER HEADS;

COMPRIZING A GREAT NUMBER OF REPORTED CASES NOT TO BE FOUND IN ANY ONE WORK OF THIS KIND,

TOGETHER WITH MANY OTHERS NEVER YET PRINTED.

POOR. (OVERSEERS.)

DOCTOR BURN, whoſe Arrangement has been *chiefly* adopted in the following Work, as well on account of its ſuperior Accuracy to any other on this Subject, as of the more general Acquaintance almoſt every Deſcription of Perſons are ſuppoſed to have therewith; from the univerſal Eſteem in which his JUSTICE OF THE PEACE AND PARISH OFFICER has been ſo long held, gives the following Hiſtorical Account of this Office.

Of their APPOINTMENT *and* DUTY *thereupon.*

"ANCIENTLY the Maintenance of the POOR, was chiefly an *Eccleſiaſtical* concern: A fourth "Part of the Tithes in every *Pariſh* was ſet apart for that Purpoſe. The Miniſter, under "the Biſhop, had the principal Direction in the Diſpoſal thereof, aſſiſted by the *Church-* "*wardens* and other principal Inhabitants; hence naturally became eſtabliſhed the *Parochial Settle-* "*ment*. Afterwards, when the Tithes of many of the Pariſhes became appropriated to the Monaſ- "teries, thoſe Societies had ſome Share likewiſe *(by reaſon of the ſaid Tithes and other Donations for that* "*Purpoſe)* in the *Relief of the Poor*, and the reſt was made up by voluntary Contributions.

"By the *Statute* of the 27 *Hen.* VIII. c. 25. the *Churchwardens* or *two other* of every *Pariſh*, were "to make *Collections* for the *Poor*, on *Sundays*. By the 5 and 6 *Edw.* VI. c. 2. the *Miniſter* and "*Churchwardens* were annually to appoint *two able Perſons, or more*, to be *Gatherers and Collectors* of "Alms for the *Poor*. By the 5 *Eliz.* c. 3. the *Pariſhioners* were to chooſe the ſaid *Collectors and Ga-* "*therers* for the *Poor*. By the 14 *Eliz.* c. 5. the *Juſtices* were to appoint *Collectors* for the *Poor* within "every Pariſh; and were alſo to appoint the OVERSEER *of the Poor*, whoſe *Office* was nearly the ſame "as it is at preſent, except only for collecting the Money, which was done by the aforeſaid *Gatherers* "or *Collectors*. By the 18 *Eliz.* c. 3. the *Juſtices* were to appoint *Collectors* and GOVERNORS of the "*Poor*. By the 39 *Eliz.* c. 3. the *Churchwardens* of every *Pariſh*, and *four ſubſtantial Houſholders* "there, being *Subſidy Men*, or for want of *Subſidy Men*, *four* other *ſubſtantial Houſholders*, to be nomi- "nated Yearly in *Eaſter Week*, by two Juſtices (1 Q.) were to be called OVERSEERS OF THE POOR "of the ſame *Pariſh*."

And ſo it continues with ſome ſmall Variation, by the *Stat.* 43 *Eliz.* c. 2. as followeth:

By the 43 *Eliz.* c. 2. ſ. 1. *the Churchwardens of every Pariſh, and four, three, or two ſubſtantial Houſ-holders there, as ſhall be thought meet, having reſpect to the Greatneſs of the Pariſh, to be nominated Yearly, in* Eaſter Week, *or within* one Month *after* Eaſter, *under the Hand and Seal of two or more Juſtices of the Peace in the ſame County, whereof one to be of the* Quorum, *dwelling in or near the ſame Pariſh or Diviſion, where the ſame Pariſh doth lie, ſhall be called* OVERSEERS *of the* POOR of the ſame Pariſh.

1ſt. THEIR APPOINTMENT.

Churchwardens were OVERSEERS OF THE POOR long before, as appears from the above Account, and confirmed ſuch by this *Statute*; and, conſequently, no formal Appointment of them to the Office of *Overſeer* is neceſſary.

By the 13 and 14 *Car.* II. c. 12. *Whereas the Inhabitants of* Lancaſhire, Cheſhire, Derbyſhire, Yorkſhire, Northumberland, *the Biſhoprick of* Durham, Cumberland, *and* Weſtmorland, *and many other Counties in* England *and* Wales, *by reaſon of the Largeneſs of the Pariſhes, cannot reap the Benefit of the ſaid Act of the* 43 *Eliz. it is enacted, that all and every the poor, needy, impotent, and lame Perſons, within every* Townſhip *or* Village *within the ſeveral Counties aforeſaid, ſhall be maintained, provided for, and ſet on Work, within the ſeveral and reſpective* Townſhip *and* Village, *wherein he, ſhe, or they, ſhall inhabit, or wherein he, ſhe, or they, was or were laſt lawfully ſettled; and there ſhall be Yearly choſen and appointed, two or more* OVERSEERS, *within every of the ſaid* Townſhips *or* Villages *reſpectively*.

By the 17 *Geo.* II. c. 38, ſ. 15, *In every* Townſhip *or* Place, *where there are no* Churchwardens, *the* Overſeers *alone may act, in all reſpects, as* Churchwardens *and* Overſeers *may do in other Places, by virtue of this or any former Act*.

And by *ſect.* 3. of the ſame Act, *if any* Overſeer *ſhall die, or remove, or become inſolvent, before the Expiration of his Office, two Juſtices (on Oath thereof made) may appoint another in his ſtead*.

PARISH, TOWNSHIP, OR VILLAGE.

Pariſh, what. PARISH, is that circuit of Ground which is committed to the charge of one Parſon or Vicar, or other Miniſter, having cure of Souls therein. How ancient the Diviſion of *Pariſhes* is, may at preſent be difficult to aſcertain; for it ſeems agreed, that in the early Ages of Chriſtianity in this Iſland, *Pariſhes* were unknown, or at leaſt ſignified the ſame that a *Dioceſe* now does.

About the Year 970. It was ordered by the Law of King *Edgar*, c. 1. that "*dentur omnes decimæ Primariæ Eccleſia ad* "*quam Parochia pertinet**;" which proves that the Kingdom was then univerſally divided into *Pariſhes*;

* *All Tithes ſhould be paid to the Mother Church in that Pariſh to which it (the Church) belonged.*

which

which Diviſion happened probably not all at once, but by degrees. For it ſeems pretty clear and certain, that the Boundaries of *Pariſhes* were originally aſcertained by thoſe of a *Manor* or *Manors*, ſince it very ſeldom happens, that a *Manor* extends itſelf over more *Pariſhes* than one, though there are many *Manors* in one *Pariſh*.

The Lords, as Chriſtianity ſpread itſelf, began to build *Churches* upon their own *Demeſnes* or *Waſtes*, to accommodate their Tenants in *one* or *two* adjoining Lordſhips; and, in order to have Divine Service regularly performed therein, obliged all their Tenants to appropriate their Tithes to the Maintenance of the *one* officiating Miniſter, inſtead of leaving them at Liberty to diſtribute them among the Clergy of the Dioceſe *in general*, and this *Tract of Land*, the Tithes whereof were ſo appropriated, formed a *diſtinct Pariſh*.

Extra-Parochial Places.

But ſome Lands, either becauſe they were in the Hands of irreligious or careleſs Owners, or were ſituate in Foreſts or Deſart Places, or were Parcels of Land detached from the main of their Eſtates, but not ſufficient to form diſtinct *Pariſhes* of themſelves; or for other, now unſearchable, Reaſons, were never united to any *Pariſh*, and therefore continue to this Day, *Extra-Parochial*, Blackſt. Com. Vol. I. 111. &c. And thus it appears, that *Pariſhes* were formerly conſidered as *Diviſions* in reference to *Eccleſiaſtical* affairs *only*; inſomuch, as a *Fine* was not admitted of Lands in a PARISH; but in proceſs of Time a PARISH became conſidered as it now is, a *Diviſion* known to the *Law* in all *Civil* Proceedings.

Pariſh may comprize many *Vills*.

A PARISH may comprize many *Vills*, but generally it ſhall not be accounted to contain more than One, except the contrary be ſhewn, becauſe moſt *Pariſhes* have but one *Vill* within them, Hil. 23 *Car.* I. B. R. and it ſhall not be *intended* that there is more than *one* Pariſh in a City, if not made to appear, for ſome Cities have but *one* Pariſh. *Ibid.*

Townſhip, what.

TOWN OR TOWNSHIP. There ought to be in every TOWN a *Conſtable* or *Tithing-man*; and it cannot be a *Town* unleſs it hath or had a *Church* with *Celebration of Sacraments*, &c. 1 *Inſt.* 115. Under the Name of a *Town* or *Village*, Boroughs, and, it is ſaid, Cities, are contained; for every *Borough* or *City* is a *Town*; and a *Townſhip* is anſwerable for Felon's Goods to the King, which may be ſeized by them. 1 *R.* II. c. 3.

Village, what;

VILLAGE OR VILL, is ſometimes taken for a *Manor*, and ſometimes for a *Pariſh*, or part of it; but a *Vill* is moſt commonly the *out-part* of a *Pariſh*, conſiſting of a few Houſes, *as it were*, ſeparate from it. *Villa eſt pluribus Manſionibus, vicinata et collata expluribus vicinis.* 1 *Inſt.* 115.

Fleta ſays, that the Difference between a *Manſion*, a VILLAGE, and a *Manor* is, a *Manſion* may be of *one* or *more* Houſes, but it muſt be but *one* Dwelling Place, and none near it; for if *other* Houſes are *contiguous*, it is a VILLAGE, and a *Manor* may conſiſt of ſeveral *Villages*, or *one* alone. Lib. 6, c. 51. And according to *Forteſ. de laud. leg. Angl. cap.* 24. the boundaries of *Villages* are not by *Houſes* or *Streets*, but by a *Circuit of Ground*, within which there may be *Hamlets*, *Woods*, and *Waſte-grounds*, &c.

Vill and *Pariſh* all one by Intendment.

WINCHCOMB *v.* GODDARD, *Trin.* 43 *Eliz.* 1 *Cro.* 837, C. B. ERROR was aſſigned in *this*. That in the Replication, the *Place where*, &c. was alledged to be Forty Acres in HENWICK-PARSONAGE, *in the Manor of Thackham in the Pariſh of Thackham*. And the Iſſue was, whether the Plaintiff was Demurrant at *Henwick-Parſonage*. And the *ven. fac.* was awarded *de Vicineto de Thackam*; where it was alledged, that it ought to have been from *Henwick-Parſonage*, which is the *Place known*, and a *Vill per ſe*. But *the Court* held it well enough, for it ſhall be *intended*, that *Henwick-Parſonage* is a *Place known*, and the *Vill* of *Thackham*, and *Pariſh* of *Thackham* be all one in *Intendment*; as 39 *H.* VI. is for the *Parſonage* of *Stoke*. And if a Thing be alledged to be done at the *Manor* in a *Vill*, the *Viſne* ſhall be from the *Vill*, which is the *moſt notorious*. Wherefore the Judgment was affirmed.

LORD SANDS v. PINDER.

LORD SANDS *v.* PINDER, *Trin.* 44 *Eliz.* 1 *Cro.* 898. B. R. TRESPASS, *quare clauſum*, &c. called *Cadbury* Grounds at *Mottesfont*. The *Defendant* pleaded, that *before the time when*, &c. he *was*, &c. *ſeized*, &c. *of and in the Rectory and Pariſh Church of Mottesfont aforeſaid, in Mottesfont aforeſaid, and one* MESSUAGE, *called the Parſonage, Parcel of the Rectory aforeſaid, in right of his Church aforeſaid. And that he and all his Predeceſſors, Rectors, &c. had right of Way from that Houſe, over the ſaid Place where, &c.* to an *Hamlet*, called *Lockerly*, in the Pariſh of *Mottesfont* aforeſaid. It was moved in Arreſt of Judgment, that the Plea was not good. Becauſe, *firſt*, it was not alledged in what *Vill* the ſaid Houſe was, whereto he claimed the Way; for it may be it was in another *Vill*, but *not allowed*. For the *Parſon* ſhall be always *intended* to be Reſident within his Parſonage: Wherefore it is *intended*, That the *Parſonage-Houſe* is within the ſaid *Vill*, where the *Pariſh* is alledged to be, (viz. in *Mottesfont*,) and *ſecondly*, for that the *ven. fac.* is only of *Mottesfont*, and not from *Lockerly* alſo. It was therefore alledged, that this was a Miſs-Trial. Wherefore, *&c.* But *all the Court* held, that foraſmuch as *Lockerly* is mentioned as an *Hamlet*, in the *Pariſh* of *Mottesfont*, it ſhall be *intended*, that the *Pariſh* and *Vill* of *Mottesfont* be both *one*; and then it ſhall be taken to be the *Hamlet* of *Mottesfont*; for although a *Pariſh* may be extended to many *Vills*, yet it ſhall not be *conceived* to be ſo, *unleſs it be ſhewn*. And to that Purpoſe *Gawdy* cited *Long*, 5 Edw. IV. That where *one* is named of a *Pariſh*, it is a good Addition.

Pariſh and *Vill* of *Mottesfont* both *one* by Intendment, and then taken to be the *Hamlet* of *Mottesfont*; for though a *Pariſh* may contain many *Vills*, yet it ſhall not be ſo *Intended*, unleſs ſhewn.

VALE *v.* FIELD, Eaſ. 12 *Jac.* 2 *Cro.* 340. *Ejectment* of a Leaſe of *Robert Arden*, made at *Cardeworth*, of Lands in the *Pariſh* of *Cardeworth*, aforeſaid, the Defendant pleaded *Not Guilty*, and being found againſt him, it was moved in Arreſt of Judgment, that the *Venue* was awarded of the *Pariſh* of *Cardeworth*, where it ought to have been of the *Vill* of *Cardeworth*; for the *Pariſh* of *Cardeworth*, *aforeſaid*, is not the *Village* mentioned before; but *all the Court* held it was good enough, for *(aforeſaid)* made them *all one*. And *the Court* ſhall not *intend*, that the *Pariſh* extend into other *Vills* than *Cardeworth*; and though a *Pariſh* may extend into more *Vills*, yet it ſhall not be *ſo intended*, eſpecially when it is ſaid, the *Pariſh* of *Cardeworth aforeſaid*, and ſo adjudged by the *whole Court*.

Town and *Pariſh* all one by Intendment.

BROCK *v.* SPENCER. *Hob.* 6. *Brock* the Plaintiff, brought *Treſpaſs* againſt *Spencer* for Cutting, &c. certain Oaks, &c. at *Hurſley*. And in the new Affignment lays it in a Cloſe called *Newlands* in *Hurſley*, aforeſaid. To this the Defendant pleaded, that *Newlands* was cuſtomary Lands of the *Manor* of *Marden*, in the *Pariſh* of *Hurſley* aforeſaid. And that by Cuſtom within the ſaid Manor, the Copyhold Tenants might, &c. The *Plaintiff* traverſed the Cuſtom, and it was found for him in the K. B. *Brock* the Plaintiff died, and *Spencer* brought a Writ of Error againſt the Executors of *Brock*, and *one* Error aſſigned was, that the *ven. fac.* was *de Vicineto de Hurſley*, and not *de Vicineto Parochiæ de Hurſley*. But all the Judges in the *Exchequer Chamber* over-ruled it to be good enough, for ſince it was firſt laid that the Treſpaſs was done at *Hurſley*, which ſhall be *underſtood a Town*; and then the Defendant ſpeaks of the *Pariſh* of *Hurſley* aforeſaid, they ſhall be underſtood *all one*, and two former Judgments were cited accordingly; for the Word *aforeſaid* couples them. And in the Caſe of

Cro. Jac. 274.

WALSH *v.* WRAY, *Ibid.* The like was adjudged in the *Exchequer Chamber*. *Cro. Jac.* 263. ſame Caſe. And in the Caſe of

Pariſh ſhall be intended a *Vill*.

WILSON *v.* LAWS, *Eaſ.* 6 W. III. B. R. 3 *Salk.* 380. In an *Appeal of Murder*, it was objected, that the Fact was laid, in the *Pariſh* of *St. Giles in the Fields*, when it ſhould have been in the *Vill*, as it ought by the *Statute* of *Gloucester*: but *not allowed*; for the *Pariſh* ſhall be intended a *Vill*. It is true, a *Pariſh* may contain more *Vills* than *one*, but that ſhall not be *intended*, unleſs ſhewn. Same Caſe, 1 Lord *Raym.* 20.

But not to contain more *Vills* than *one*, unleſs ſhewn.

Having

Having thus endeavoured to deſcribe each ſeparately, whereby it might appear, that, *as to this Subject*, they are in Law *all one*, I proceed to ſhew,

1. PARISH, TOWNSHIP, *or* VILLAGE, *or what ſhall or ſhall not be deemed ſuch, within the meaning of the* 43 *Eliz.* c. 2. *and* 13 & 14 *Car.* II. c. 12. *And herein of* EXTRA-PAROCHIAL PLACES, *as far as they relate to this* HEAD. Vide further as to them Title REMOVAL, &c.

HILTON *v.* PAWLE. *Hil.* 2 *Car. Cro. Car.* 92. *Treſpaſs* for taking a Saddle of the Plaintiff's at *Stoke-Goldingham.* Upon *Not Guilty*, a Special Verdict was found, *viz.* That the Pariſh of *Hinkley*, in the County of *Leiceſter*, is, and Time whereof, *&c.* was, an ancient Rectory and *Pariſh Church*; and that the *Village* of *Stoke-Goldingham* is an ancient *Village*, and Parcel of the Rectory of *Hinkley* aforeſaid; and that from the Time of King *Henry* the Sixth, and always afterwards until this preſent, there is, and hath been, a *Church* in the ſaid *Village* of *Stoke-Goldingham*, which, during all the ſaid Time hath been uſed and *reputed* as a *Pariſh*, and that the Inhabitants of *Stoke-Goldingham* aforeſaid, during all the ſaid Time, have had all *Parochial Rites* and *Churchwardens*, and that the ſaid Village of *Stoke-Goldingham* is diſtant from *Hinkley* about two Miles; and if, *ſuper totam Materiam in forma prædicta compertam videbitur Juſticiariis & Curiæ hic* *, that the aforeſaid *Village* of *Stoke-Goldingham* be ſuch a *Pariſh* as by *Stat.* 43 *Eliz.* c. 2. for *Relief of the Poor*, is chargeable to the maintaining *their own Poor*: Then they ſay the Defendant *is Guilty*, to the Damage, *&c.* and if *ſuper totam, &c.* that the aforeſaid *Village* of *Stoke-Goldingham* ſtands chargeable, by the *Statute* aforeſaid, to maintain the *Poor* of *Hinkley* aforeſaid: Then they ſay that the Defendant is *not Guilty*: And upon this Verdict being argued at the Bar by *Athoe* for the *Plaintiff*, and *Berkley* for the *Defendant*, the COURT reſolved and delivered their Opinion *ſeriatim* for the *Plaintiff.*

A *Village*, tho' Parcel of a Rectory, yet having from the Time of *Henry* VI. a *Church*, and *reputed* a *Pariſh*, and having *Parochial Rites*, and *Churchwardens*,

That this is ſuch a *Pariſh* within the *Statute* 43 *Eliz.* as is chargeable for the *Relief of the Poor* of *Stoke-Goldingham*, and *not* for the *Poor* of *Hinkley*; for being found, that it was a *Church* in the Time of King *Henry* the *Sixth*, *et tunc et ſemper poſtea* †, REPUTED for a PARISH, and not in the negative, that it was *not* a *Pariſh* before: It may be well *intended* to be a *Pariſh* before, and it doth not *exclude*, that it was not before *time whereof*, *&c.* And although it ſhould *not* be ſo *intended*, yet being *found* that it was *a Church then*, and that there were *Churchwardens* there, it is a *Pariſh* within the *Statute*, although it be but a *reputative* PARISH; for, being in uſe ſo long before the *Statute*, and at *the Time* of the *Statute*, the *Statute* appoints that the *Churchwardens*, and *three* or *four* OVERSEERS OF THE POOR joined with them, *ſhall*, *&c.* and no *Churchwardens* of *Hinkley* are *Churchwardens* of *Stoke-Goldingham*, and, *by Conſequence*, have nothing to do there; and *Churchwardens* of *Stoke-Goldingham* are only to meddle with the *Church* there, and, *by Conſequence*, with the *Poor* of the *Pariſh*; and the *Statute* hath an Intention to confine the Relief to *Pariſhes* then *in eſſe*, and that every *Pariſh* ſhould meddle with its proper *Village*, and *their* Poor are to be provided for *there*, and *not elſewhere*; wherefore it was adjudged for the Plaintiff.

is a *Pariſh* within 43 *Eliz.* for being found that it was a *Church* in the Time of *Henry* VI. and then, and always after, *reputed* a *Pariſh*, and not in the *negative*, may be *intended* a *Pariſh*, before Time whereof, *&c.*

43 *Eliz.* intended to confine the Relief of the Poor to *Pariſhes* then *in eſſe.*

NICHOLS *v.* WALKER *and* CARTER. *Trin.* 10 *Car. Cro. Car.* 394. TRESPASS for entering into his Houſe in *Tatridge*, and taking of a *Fowling-piece* and other Goods. Upon *Not Guilty* a Special Verdict was found, that *Carter* was *Churchwarden* of the *Pariſh* of *Hatfield*, and *Walker* was *Overſeer of the Poor* of the *Pariſh* of *Hatfield*; and that the 16th *November* 1632, a Rate was made by the Inhabitants of *Hatfield*, for the Relief of the Poor of that *Pariſh*, according to the *Statute:* That the

* "*Upon the whole Matter in form aforeſaid found, it ſhall appear to the Juſtices and Court here.*"

† "*And then and always afterward.*"

Plaintiff

NICHOLS v. WALKER.

Plaintiff was an Inhabitant in *Tatridge*, not having any Lands in *Hatfield*, but having Lands in *Tatridge*, and was rated by the ſaid Rate, towards the Relief of the Poor of *Hatfield:* That the *Plaintiff* having refuſed to pay, by Warrant of Juſtices, they diſtrained the Goods aforeſaid, and they found,

A *Village*, Parcel of a *Pariſh*, never by any legal Act ſevered therefrom, the Tithes thereof paid to the Parſon of that *Pariſh*, who uſed always to find a Curate for ſuch *Vill*, there being no Parſon there; but being a reputed *Pariſh* at the Time of making the ſaid Act, and ſixty Years before, having Pariſh Officers, and all Rates, Levies, *&c.* made there for the Relief of their Poor, with Parochial Rights, ſhall be charged to its own Poor only, within the *Statutes*.

That anciently the *Village* of *Tatridge* was Parcel of the *Pariſh* of *Hatfield*, and that there was not any legal Act to ſever the ſaid *Vill* from the *Pariſh* of *Hatfield*, *Quodque modo et ante tempus cujus, &c.* the Tithes of *Tatridge* were paid to the Parſon of *Hatfield*; and that the Parſon of *Hatfield* uſed always to find a Curate at *Tatridge*, and that there is no Parſon at *Tatridge*; and that for *threeſcore Years* paſt and more, and *at the Time* of making the ſaid *Statute*, 43 *Eliz.* c. 2. for *Relief of the Poor*, and always from thence until this Day, called the *Village* of *Tatridge*, commonly *reputed* to have been a *Pariſh* of *itſelf*, and for the Whole of the ſame Time, and the Inhabitants uſed to elect and have *Conſtables*, *Churchwardens*, and *Overſeers of the Poor* there; and that for all the ſaid Time, *Rates*, *Aſſeſſments*, and *Levies*, have been made there by them, for the Relief of the Poor of *Tatridge*, which *Rates*, during all the ſaid Time, have been uſed to be levied by *their* proper Officers for Relief of the Poor *there*, without any paying to the Poor of *Hatfield*, or joining in any Aſſeſſment with the *Town* of *Hatfield:* And that the Church of *Tatridge*, during all that Time, have had all Parochial Rights: And that the Inhabitants of *Tatridge* have not uſed all that Time to contribute to the Reparation of the Church at *Hatfield*, but to the Reparation of *their own* proper *Church* and *Chapel* only. *And if upon the whole Matter, &c.* And, after Argument at the Bar by *Brian* for the *Plaintiff*, and *Atkins* for the *Defendant*, the *Court* reſolved, That Judgment ought to be given for the *Plaintiff:* For *Tatridge* being a *Pariſh* in Reputation ſo long before and after, and at the Time of the *Statute* made, it ſhall not be now for this Purpoſe charged by *Hatfield*, but it ſhall be charged by itſelf, and for their Poor only. And they relied on the foregoing Caſe of *Hilton v. Pawle*.

Pariſhes in *Reputation* only are within the *Stat.* 43 *Eliz.* as other *Pariſhes* are, if the Uſage of ſuch Pariſh to *chuſe Overſeers* has been conſtant *without Interruption*; but otherwiſe, the Overſeers and Collector of the Mother Church are only within the Statute: By MONTAGUE, Ch. J. and DODDRIDGE, J. But HOUGHTON, J. *contra*, as to reputative Pariſhes being within the *Stat.* 2 *Rol. Rep.* 160. 2 *Nelſ. Abr.* 1285. E. 18 *Jac.* B. R.

One Pariſh may contain ſeveral *Vills*, when there are diſtinct *Conſtables*, but if the *Conſtable* of *one* runs through the *whole*, then the *whole* is but one *Vill*.

Sed quære. Vide next Caſe.

WALDRON *v.* ———, *&c.* M. 22 *Car.* II. B. R. 1 *Mod.* 78.—HALES—It is true, one *Pariſh* may contain three *Vills*. The *Pariſh* of A. may contain the *Vills* of A. B. and C.; that is, when there are diſtinct *Conſtables* in *every one* of them. But if the *Conſtable* of A. doth run through the Whole, then is the Whole but one *Vill* in Law. Or where there is a Tithing-man, it may be a *Vill:* But if the *Conſtable* run through the *Tithing*, then it is all one Vill. I know where Three or Four Thouſand Pounds a Year hath been enjoyed by a *Fine* levied of Land in the *Vill* of A. in which are *Five* ſeveral *Hamlets*, in which are *Tithings*; but the *Conſtable* of A. runs through them all, and upon that was held good for all. Here was a Caſe of the Conſtable of *Blandford-Forum*, wherein it was held, that if he had a *concurrent* Juriſdiction *with all* the reſt of the *Conſtables*, the *Fine* would have paſſed the Lands *in all*. In ſome Places they have *Tithing-men*, and no *Conſtables*.

POLLEXFEN—*Lambard* 14. is, that the *Conſtable* and the *Tithing-man* are all One.

HALES—That is, in ſome Places. *Præpoſitus* is a proper Word for a *Conſtable*, and *Decimarius* for a *Tithing-man*.

When Conſtable of one runs through the whole, they may be either ſeparate *Vills* or one *Vill*.

In the Caſe of GREEN *v.* PROUDE, *Eaſ.* 26. *Car.* II. B. R. 1. *Mod.* 117. It was objected, that a Recovery *(ſuffered in the Marquis of* Wincheſter's *Court in ancient Demeſne)* was of Land in *Kingſcleare*. Whereas the Land claimed was in a particular *Vill* called ———: That the *Vills* were *ſeveral*, and that there were diſtinct Courts in every *Vill*. But by

HALES

HALES—There are ſeveral *Tithings* of *Dale*, *Sale*, and *Downe*, there is a *Tithing-man* in every particular Place; but the *Conſtable* of *Dale* goes through all; theſe may go for ſeveral *Vills* or one *Vill*. There may be a *Manor* that hath ſeveral little *Manors* within it, wherein are held ſeveral Courts for the Eaſe of the Tenants, but all but one *Manor*. As the *Manor* of *Barton* hath ſeveral little *Manors* under it, yet all within the *Manor*. GREEN *v.* PROUDE.

RUDD *v.* FOSTER. M. 4. W. & M. B. R. 4. *Mod.* 157. In Replevin for taking of a Gelding, the Defendant juſtified by Virtue of the *Stat.* of the *Queen* (43 *Eliz.*) for Money due upon the *Poor Tax*.

The Parties being at Iſſue, it was tried at Bar, and the Queſtion was, Whether the *Vill* of *Stratton* was in the *Pariſh* of *Biggleſwade*, in *Bedfordſhire*, or not?

The Evidence to prove it to be in that *Pariſh* was, that there were but two *Churchwardens* and *two Overſeers of the Poor*, and that *Marriages*, *Burials*, and *Chriſtenings* and all other *Parochial Rights*, were done at *Biggleſwade*, and that the Inhabitants of the *Vill* of *Stratton* did contribute to the Repairs of the Church of *Biggleſwade*.

On the other Side, to prove that *Stratton* was a *reputed Pariſh* by itſelf, at the Time of the making of this Statute, this Evidence was given, *viz.*

In the Reign of *Edward* III. there was a *Public Chapel*, there, where the People went to hear Maſs, and that *Divine Service* was read in that Chapel at the Time of the making of this Statute.

Then it was proved, that *a Rate* was made there in the Year 1654; and that formerly they had diſtinct *Conſtables*, and repaired their own Highways, till the Year 1634, and the Difference between them was ſettled by the Judges in their Circuit.

They would have this like the Caſe between the *Pariſh* of *Tateridge* and *Hatfield*. (Ante 5. *Nicholas v. Walker*, &c.)

But *Stratton* was not ſo much a *Pariſh* in *Reputation* at the Time of the making the Act, and ſo not like that Caſe; for all that was proved was, that they had made *Rates* ſince the Statute, and had a *Chapel* before; but making *Rates* will not make it a *Pariſh* without all other *Parochial Rights*, and therefore it was held to be a *Vill* in the *Pariſh* of *Biggleſwade*. Not being a *Pariſh* in *Reputation* at the Time of making the Act, though making their own Rates, and having a diſtinct Overſeer, without all Parochial Rights, is not within the Stat. 43 *Eliz.*

The ſame Caſe is reported in 2 *Salk.* 501. where it is further ſaid, "That becauſe at *Stratton* they had but one *Chapelwarden*, whoſe Office it was to collect the Rates taxed upon *Stratton*, and pay them to *Biggleſwade*, they were held Part of the *Pariſh* of *Biggleſwade*, and not a *reputed Pariſh* within 43 *Eliz.* and their having a *diſtinct Overſeer*, and maintaining their own Poor, was not thought ſufficient to make them a diſtinct *Pariſh*."

If a Place be named generally, that Place ſhall be taken to be and intended a *Vill*; adjudged *Mich.* 10 *W.* III. B. R. *Ibid.*

And in the Caſe of *Doulting* and *Stoke-Lane*, (Poſt.) PARKER, *Ch. Juſtice*, in delivering the Opinion of the Court, ſaid, "*This Order* of Seſſions is *naught*, becauſe this is not within a *Town* or *Village*; and, therefore, though *Extra-Parochial Towns* and *Vills* are within this Law, yet not other Places which are neither *Town* nor *Vill*. If it were ſaid at *Brewcomb's-Lodge* generally, and no more, that might be intended a *Vill*; but this is ſaid to be a *certain Extra-Parochial Place* called *Brewcomb's-Lodge*; ſo that this may be but *one* Houſe, for it muſt conſiſt of *ſeveral* Houſes, and Inhabitants; ſo that, it not appearing to be any more than *one ſingle* Houſe, it is not within the Act of Parliament." *Vide* what the Order was in the Report of the Caſe, Poſt.

SKELLINGTON *v.* NORTON.—*Freem. Rep.* 401. There were *two Vills* in one *Pariſh*, which had *uſed ſeverally to maintain their own Poor*, and now there being *Overſeers* made of the *whole Pariſh*, they were *rated together*. The Queſtion was, Whether having been *uſed Time out of Mind* to pay *ſeverally*, they might now, by the *Stat.* 43 *Eliz.* c. 2. be rated together? By HALE, *Ch. Juſtice*—If there be

no

SKELLINGTON v. NORTON.

no Chapel within the Vill, where the *Church* does *not* ſtand, it is *not ſufficient* to make it a *reputed* Pariſh within *Statute* 43 *Eliz.*

ANONYMOUS—*Eaſ.* 13 *W.* III. 12 *Mod.* 504. Indictment concluding *ad nocumentum* of Inhabitants of a certain *Vill*, was quaſhed for the ſpecial Concluſion.

BY THE COURT—A Chapel's having *Sacramentals* only, makes it not Independent of the *Pariſh*, but it muſt have all other *Badges*, as *Sepultures*, *&c.*

12 *Mod.* 546. *Trin.* 13 W. III. P. HOLT, CH. J. A *Vill* and a *Village* are the ſame, and a *Hamlet* is a Diviſion of a *Vill.* 18 *Ed.* I. the whole *Vill* is a *Conſtabulary*, and a *Hamlet* is commonly a *Tithing.*

Towns and *Villages* in *Extra-Parochial* Places, are within 43 *Eliz.*

Hil. 11 *Anne*, *Vin. Abr. Title* POOR, 421. The Court held that the laſt Clauſe in the 21 *Sect.* 13 & 14 *Car.* II. *extends to Towns and Villages in Extra-Parochial Places*, as well as *within Pariſhes*; for the *Law-Makers* had in View the Inconvenience, that ſome *Towns* and *Villages* would not have the Benefit of 43 *Eliz.* This *Stat.* is of (*Towns*, *&c. in Counties*), and not (*in Pariſhes*), and *Towns* and *Villages* in *Extra-Parochial* Places are plainly within the *Words*, though not *directly* within the *View* of the Act; and though there be not Officers appointed in *Extra-Parochial* Places, yet the Juſtices ought to do it upon Complaint. *M. S. Caſes.*

Mandamus to appoint Overſeers in *Extra-Parochial Places.*

THE KING *v. the Inhabitants of* RUFFORD. *Eaſ.* 8 *G. Str.* 512. *Mandamus* directed to the Juſtices of the Peace of the County of *Nottingham*, reciting, that within the *Vill* of *Rufford* there are divers ſubſtantial Freeholders able to contribute to the Maintenance of the Poor, and that there are Poor unprovided for; *therefore* it commands them to appoint *Overſeers.*

They return that the *Ville* of *Rufford* is Part of *no Pariſh*, but Time out of Mind has been *Extra-Parochial*, without Church, *Chapel*, or *Parochial Rights*, and that there never have been any *Overſeers of the Poor*, and for that Cauſe they cannot appoint.

Poſt.

And there having been only an *obiter* Opinion of the Court in the Caſe of *Doulting v. Brewcomb's-Lodge (Stoke-Lane) Hil.* 11 *Anne*, B. R. that *Overſeers of the Poor* might be appointed in *Extra-Parochial Places*, the Court directed an Argument, that the Point might be ſolemnly determined.

And after Argument and Conſideration of all the Statutes relating to the Poor, the Court were of Opinion, that the Powers given by the 43 *Eliz.* to be executed in *Pariſhes*, were, by the 13 & 14 *Car.* II. c. 12. extended to all *Townſhips* and *Villages*, whether *Parochial* or *Extra-Parochial*, and, conſequently, *Overſeers* might be appointed in this Caſe, for which Purpoſe a peremptory *Mandamus* was awarded.

Two Houſes in an *Extra-Parochial* Place are not enough to denominate a *Vill.*

THE KING *v. the Inhabitants of* DENHAM. *Eaſ.* 8 *G.* II. *Burr.* S. C. 35. Two Juſtices removed E. W. and E. his Wife from *Dalham* to *Denham:* And the Seſſions upon an Appeal confirm the Order, and ſtate the Caſe ſpecially. E. W. hired a Houſe and Farm of 10*l.* a Year and lived therein from the Year 1725 to the Year 1730, and was rated and paid to the Poor's Rates of the ſaid Pariſh: Afterwards he hired another Houſe and Farm in *Southwold Park*, of 150*l.* a Year, and lived there for ſeveral Years. But *Southwold Park* aforeſaid is an *Extra-Parochial* Place, conſiſting of *two* Houſes and about 300 Acres of Land only, belonging to and in the Occupation of different Perſons, being in the Whole of the Value of near 300*l. a Year.* And it *does not appear* that within the ſaid *Extra-Parochial* Place there *are*, or *ever were*, any Perſons appointed to receive or provide for the Poor happening therein.

Mr. *Strange*, who moved to quaſh theſe Orders, ſaid, It was now eſtabliſhed "that a Perſon *may* be "removed to an *Extra-Parochial Place*, which may be looked upon as a *Townſhip* or *Vill*, and has "more Houſes than *one*;" and "that a *Mandamus* will lie, to appoint *Overſeers* for an *Extra-*"*Parochial* Place," and cited the Caſe of *Dolting*, *Stoke-Lane*, and *Brookham-Lodge*, and the *King v. Rufford.* Therefore the laſt legal Settlement of the Paupers was at *Southwold Park*, not at *Denham.*

Mr.

Mr. *Abney* and Mr. *Filmer*, on the other Side, argued, that the *general* Rule is, that Perſons cannot be ſent to or from *Extra-Parochial* Places. And there is no Inconvenience in this Doctrine: For as they are not to take *other's* Poor, ſo neither are *other's* obliged to take *their's*. Indeed, if ſuch *Extra-Parochial* Place be ſo populous as to be looked upon as a *Town* or *Vill*, that may make a great Difference.

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In the Caſe of *Stoke-Lane*, *Dolting*, and *Brookham-Lodge*, the Pauper *was* ſent to an *Extra-Parochial* Place called *Brookham-Lodge:* And the Order was quaſhed, becauſe the *Extra-Parochial* Place did *not* come under the Notion of a *Townſhip* or *Village*.

The Act of 13 & 14 *Car.* II. c. 12. extends to *all England*, if the *Extra-Parochial* Place *can* come under the Notion of a *Townſhip* or *Village*.

In the King *v. Belvoir* *, M. 2 *G.* II. B. R. where there were only two Houſes, but never any Officers, the Order of Removal to that Place was quaſhed.

In the King *v. Rufford*, it appeared, on the Proceedings, that it was a *Ville*, though *Extra-Parochial*. A *Townſhip* or *Village*, by *Finch's* Law, ſhould contain *ten* Families. And by *Waldron's* Caſe, a *Village* is a Diſtrict that hath a Petty Conſtable over it. Ante 6.

It was argued in Reply, that this Caſe was within the meaning of a *Ville*, as laid down in the Caſe of *Dolting* and *Brookham-Lodge*, as having more Houſes than *One*, as well as the Definition in *Co. Litt.* 115. If a *Town* be decayed, it it ſtill a *Town*. This ſhall be intended a *Ville*, 1 *Mod.* 117. *Green v. Proude*. 1 *Mod.* 251. Ante 6.

In the Caſe of *Belvoir*, there was a material Fault; for it was directed, "To the *Churchwardens and Overſeers* of the *Pariſh* or *Liberty* of *Belvoir*." Whereas it was particularly ſtated that there *were none*. Beſides, it was not defended.

Lord HARDWICKE—This is to *me* a new Caſe. Before the Caſe of *Dolting* and *Stoke-Lane*, it had been generally taken that there was no *Power* lodged in the Juſtices of Peace to ſend Paupers to *Extra-Parochial* Places where there were no *Overſeers:* But in *that Caſe*, all the Court held that within the 13 & 14 *Car.* II. c. 12. the Court *might oblige* the Juſtices to appoint *Overſeers*, where the Place might come under the Notion of a *Townſhip* or *Village*. Now that Clauſe (Sect. 21.) was plainly *intended* for *Townſhips* in the large Northern Pariſhes only; and that appears by the recital Part of the Act: But in the *enacting* Part, the *Words Towns*, *Hamlets*, and *Vills*, are mentioned at large; and therefore the Court did determine, that a Settlement might be gained in ſuch *Pariſhes at large*, without confining it to thoſe Pariſhes *only* which were particularized in the Recital. That alone was a *very liberal* Conſtruction of the Act: But they thought it within the *Miſchief* provided againſt by the Act, and reaſonable. And I believe my Lord Chief Juſtice *Parker's* Words were, "That a Settlement *might* "be gained in an *Extra-Parochial Place*, conſiſting of *more* Houſes than *one*, ſo as come under the "Notion of a *Town* or *Village*."

Now *this* Place is called a *Park*, and deſcribed as *ſuch*. It is certainly very hard to define exactly *what* is a *Townſhip* or *Village:* It muſt be left to the Judgment of the Court, upon the Conſtruction of the Caſe ſtated. By the 43 *Eliz.* there muſt, in *every* Place, be *more* OVERSEERS than *one*; and when there are only *two* Houſes in a Place, muſt the whole Pariſh be perpetual Overſeers; and in ſuch a Caſe there is nobody over whom they are to have Juriſdiction, nor any body to chuſe them, excepting themſelves.

* The KING *v. the Inhabitants of* BELVOIR. H. II G. II. Is thus reported in 2. *Seſs.* Caſ. 111. Caſe 105. *Moved* to grant an Order of Seſſions, upon which there had been no Adjudication; but the Judgment of the Court was ſuſpended. The Exception was, it appears in the Body of the Order, that *Belvoir* is an *Extra-Parochial* Place, and that there neither now is, nor ever was, an Officer in the Place, neither Churchwardens nor Overſeers, nor any Inhabitant, except one Perſon who kept an Alehouſe. In *Salk.* 486. it was held by *Holt, Ch. J.* If a Place is *Extra-Parochial*, and had not the face of a Pariſh, the Juſtices have no Authority to ſend any Man thither.

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Now this Place does not appear to my Satisfaction to be a *Town* or *Village*. In the Case of *Dolting* and *Stoke-Lane*, the Order was quashed because *Brookham-Lodge* was holden by the Court *not* to be a *Town* or *Village*; notwithstanding that the *general* Law was there laid down as I have before mentioned. And here the Place does not, in my Opinion, come under the Notion of a *Town* or *Village*: And the Orders ought therefore to be affirmed.

PAGE, J. held, that a *single* House, or *two* Houses, cannot amount to the Notion of a *Town* or *Village*. If the Place had *formerly* consisted of *more* than *two*, or had been a *Town*, and fallen to decay, it ought to have been *so stated*; however, if the Houses were really and in fact decayed and gone, it would then *cease* to be a *Town* or *Village*.

A *Town*, or *Village*, in common parlance, is an *aggregate Number* of Houses. Therefore he concurred.

PROBYN, J. was of the same Opinion. The *least* Division known in the Old Law is a *Tithing*, which consisted of *ten* Families. I should therefore think a *Vill* must consist of *at least* as much as a *Tithing*: It seems, indeed, to be something between a *Tithing* and a *Town*. Since there is no certain Definition of a *Vill*, why should we not fix it to the Number of a *Tithing*, *at least*?

* *Dolting v. Stoke-land.*

The 13 and 14 *Car.* II. c. 12. was, I believe, intended for the *Northern* Parishes: But it was at length construed to extend to *all others* in *England*, * as coming under the same Equity and Reason.

The Limitation of the "more Houses than one," in the Case of *Dolting*, is so as to come under the *Notion* of a *Township* or *Village*. Now, if there are but *two* Housekeepers, are these two People to chuse *themselves*, and to be *perpetual* Overseers; I think *two* Houses are not within the Rule, so as to come within the Notion of a *Township* or *Village*.

Lee, J. was of the same Opinion.

It is now thoroughly settled, that the Justices may appoint *Overseers* in *Extra-Parochial* places. But it is upon the Principle and Foundation, that the *Extra-Parochial* Place, comes under the *Notion* of a *Village* or *Town*. I think a *Village*, according to the *ancient* Law, is a *tithing* consisting of *ten* Families: According to the *modern* Notion, it is a Place that has a civil Officer called a *Constable*. I think it ought at *least* to have the *Reputation* of a *Vill* or *Town*. But this Place is not stated to have had the *Reputation* of a *Vill* or Town; but *only* "to consist of two Houses." *Lord Coke's* Definition of a *Ville*, *expluribus Mansionibus vicinata*, must mean *more* than *two* Houses, but this does not appear before us to be such a Place, as we can say is *within* the *Stat.* 13 and 14 *Car.* II. c. 12.

A *Village* according to the *ancient* Law, is a *Tithing*, consisting of *ten* Families; according to the *modern* Notion, a Place having a *Constable*.

LORD HARDWICKE, on an Application that it might be again argued, said, that he could not distinguish it from the Case of *Belvoir Castle* (where there was only the Castle which was the Duke of Rutland's House, and an Alehouse,) and could not be considered as a *Township* or *Village*. And the Orders were both affirmed. Same Case reported, *Str.* 1004. 2d *Sess. Cas.* Ed. 1760. 250. And *Cases* in B. R. 7, 8, 9, and 10 G. II. *pa.* 163, all *differently entitled*.

An Issue granted to try the Truth of a Return to a *Mandamus*.

THE KING *v. the Overseers of the Poor of the Town of* SPOTLAND. M. 9. G. II. *Cases temp. Lord Hardw.* 184. A *Mandamus* issued to the Defendants to make a Rate for the Poor, who returned, that there are two *Townships*, *Further Spotland* and *Nearer Spotland*; and that *Overseers* are appointed for the *Township* of *Further Spotland*, and that the Inhabitants thereof have made a Rate, and provided for their Poor; and upon this Return in behalf of the *Township* of *Nearer Spotland*, an Information was moved for against the Defendants as for a false Return; for the Question is between these Places, whether they shall join in the Maintenance of the Poor, as *one Parish* or *Township*, or not; there being *many* in *Nearer Spotland* and very *few* in the other; and, therefore, *Nearer Spotland* alledged, that they are not *distinct*, but *one* and the same *Township*, which now upon shewing Cause is denied by *Further Spotland*; and they offer to try it in a feigned Issue.

LORD HARDWICKE. If this had been a *Mandamus* upon the *Stat.* of 2 Ann. c. 20. ("which is an "Act for rendering the Proceedings on *Quo warrantos* and *Mandamus* more effectual in Cases of Members of

"of Corporations, who have been turned out of their Franchiſes; and enacts, that when a Return is "made to ſuch Mandamus, it ſhall be lawful for the Perſon ſuing or proſecuting ſuch *Mandamus*, to "plead to or traverſe the material Facts contained therein, to which the Perſons making ſuch Return ſhall "reply, take iſſue or demur; and ſuch Proceedings ſhall be had therein, as if the Perſon had brought an "Action for a falſe Return,") the Return might have been traverſed; or had it been a *Mandamus* concerning ſome private Right, the Party might have had an Action for a falſe Return; and ſo a peremptory *Mandamus* if the Return had been wrong; but here there cannot be an Action for a falſe Return, becauſe no one is particularly intereſted, ſo there is no Remedy but an Information, and there being a direct Contrariety in the Affidavits, it is the Courſe of the Court to grant an Information to try the Fact. *Per Cur.* Let an Information go.

KING *v.* SPOTLAND.

THE KING *v. the Overſeers of the Poor of the Manor of* GRAFTON, *Eaſ.* 10 G. II. *Strange* 1071. A poor Perſon was removed to *Grafton:* and on Appeal it was ſtated to be an *Extra-Parochial* Place, formerly a Seat of the *Earl of Shrewſbury*, conſiſting of a capital Meſſuage and three Lodges in the Park, but ſince converted into five Houſes and Farms: and the Seſſions adjudge, it a *Ville*, that ought to maintain its own Poor. This was moved to be quaſhed, upon the Authority of the Caſe of *Denham* and *Dalham.* (*Ante.*) And a Rule was made to ſhew Cauſe.

Afterwards on an Affidavit of Service the Rule was made abſolute, this not appearing to have the *Reputation* of a *Vill.*

Five Houſes in an extraparochial Place do not conſtitute a *Ville.* Burr S. C. 101. 2 Seſſ. Caſ. 217 Same Caſe.

THE KING *v. the Inhabitants of* WELBECK. M. 14. G. II. *Strange* 1143. A *Mandamus* was granted, ſuggeſting, that there were *ſeveral Houſholders* and *Farmers*, inhabiting and reſiding within the *Village* of *Welbeck* able to provide for the Poor; and, therefore, commands the Juſtices to appoint *Overſeers of the Poor.* To this it is returned, that *Welbeck* is *Extra-Parochial*, and *is not*, nor *ever* was *reputed* to be a *Village* or *Townſhip*, and, *therefore*, they cannot appoint any Perſons *Overſeers.*

And upon Argument, this was held to be a good Return, for though it does not anſwer the Suppoſal of the Writ, as to there being *ſeveral ſubſtantial Houſholders* and *Farmers*; yet it anſwers the Point in 13 and 14 *Car.* II. c. 12. by ſaying, it is no *Townſhip* or *Village* nor *reputed* as ſuch: and it is to ſuch Places *only* that we can ſend a Writ. *Bott.* 16. *ſame Caſe.*

It is a good Return to a *Mandamus* for appointing *Overſeers* that the Place is not a *Village* or *Townſhip.*

THE KING *v.* SEVERN *and* ARNOLD. E. 29 G. II. *Sayer*, 278. Upon a Rule to ſhew Cauſe, why an Appointment of *Overſeers of the Poor* ſhould not be quaſhed, it appeared, that the Defendants were appointed, by two Juſtices of the Peace, *Overſeers of the Poor* within the *Precinct* of the Tower, otherwiſe called the *Pariſh of St. Peters ad Vincula*, within his Majeſty's Tower of *London*; and that they were appointed under 43 *Eliz.* c. 2. and not under 13 and 14 *Car.* II. c. 12.

The Rule was made abſolute.

An Appointment of *Overſeers* of the Poor for a *Precinct* is void.

And by DENISON, J. We are of Opinion; and the late *Chief Juſtice* *, did concur in this Opinion, the Appointment of the Defendants to be *Overſeers of the Poor*, is void. It does expreſsly appear, to be an Appointment under 43 *Eliz.* But it is not a good Appointment under that *Statute*, nor under the 13 and 14 *Car.* II. The former of theſe *Statutes* does only give a power of appointing *Overſeers of the Poor* in *Pariſhes*; and this Power is by the latter *Statute* only extended to *Townſhips* and *Vills.* And we are of Opinion that both theſe *Statutes*, which have in other Inſtances been *ſtrictly* conſtrued, ought to be ſo conſtrued in the preſent Caſe. In the Caſe of the *K. v. Curle and others. Mich.* 20 G. II. it was holden, that the very words *Subſtantial Houſholders*, which are the Words of the 43 *Eliz.* muſt be uſed in an Appointment of Overſeers of the Poor; and an Appointment, wherein the Perſons appointed were called *Principal Inhabitants*, was quaſhed. And the ſame Strictneſs in conſtruing this *Statute* has been obſerved in divers other Caſes.

* Sir *Dudley Ryder*, who died the 25th May; and this Judgment was given the 31ſt.

KING v. SEVERN, &c. Ante 5.

It has been ſaid, that as the Place of which the Defendants were appointed Overſeers, is called the *Pariſh* of *St. Peter's ad Vincula*, within his Majeſty's Tower of *London*, as well as *Precinct of the Tower*, it is a *Pariſh* by *Reputation*, and the Caſe of *Hilton v. Pawle* has been cited, in which it was holden, that a *Pariſh* is within the meaning of the 43 *Eliz.* But although a Place may be a *Pariſh* by *Reputation*, and although *Overſeers of the Poor*, may be appointed for ſuch Place; yet an *Appointment* of *Overſeers* for ſuch Place will be bad, unleſs the Place be therein *expreſsly* called a *Pariſh*. In the preſent Caſe, the Deſcription of the Place is, *Precinct within the Tower*; for the Words, *Pariſh* of *St. Peter's ad Vincula*, *within his Majeſty's Tower of London*, are under an *otherwiſe called*; and the Rule in ſuch Caſes is, that the Name or Deſcription which precedes an *otherwiſe called*, is always to be conſidered as the true Name or Deſcription, and not the Name or Deſcription which follows. In an Anonymous Caſe, 3 *Bulſtr.* 296. it is ſaid, that the whole Court were clearly of Opinion, that the true Name of a Man is that which does *precede* an *alias dictus*, and an Indictment was in that Caſe quaſhed, becauſe the Addition of the Perſon indicted, followed the *alias dictus*. It has been ſaid, that, although the Place, of which the Defendants were appointed *Overſeers* be not a *Pariſh*, the Court may *intend* that it is a *Townſhip* or *Vill*, within the meaning of the 13 and 14 *Car.* II. But, as it is not expreſsly called a *Townſhip* or *Vill* in the Appointment, the Court ought not to *intend* that it is a *Townſhip* or *Village*, in order to make an APPOINTMENT good, which is not warranted by that *Statute*.

24 H. VIII. Brooks pl. 49. fo. 9. Brook tit. Bryſe pl. 418. & 33 H. VIII. Dyer 51.

Order for the Appointment of *Overſeers of the Poor*, for *Village* or *Townſhip* quaſhed, becauſe not in fact ſo.

THE KING *v.* SHOWLER *and* ATTER. *Trin.* 3 *Geo.* III. B. R. *Burr. Manſf.* 1391. Mr. *Harvey* ſhewed Cauſe againſt quaſhing an Order of Seſſions, which confirmed an Order of two Juſtices of *Lincolnſhire-Lindſey*, nominating and appointing *Thomas Showler* and *John Atter*, being ſubſtantial Houſholders of the *Townſhip* or *Village* of *Haugh*, in the ſaid Parts, to be *Overſeers of the Poor* of the ſaid *Townſhip* or *Village* of *Haugh*, for the Year next enſuing, according to the Direction of the Statute; and alſo againſt quaſhing the ſaid original Order of the two Juſtices. The Caſe was:

Thomas Showler, one of the ſaid *Overſeers* ſo appointed, having appealed to the General Quarter Seſſions, from this Warrant or Order of Appointment, it was adjourned to the next, who ſtate, that it appears to them, that the ſaid *John Atter* in the ſaid Appointment named is a *Day-Labourer*; and that the ſaid Place called *Haugh*, conſiſts of a *capital Meſſuage*, in which *Thomas Showler* in the ſaid Appointment named, with all his Family, dwells; and of *two ancient ſmall Cottages*; and of *one* other *ſmall Cottage*, *lately built*; all which ſaid Cottages are *let along with the ſaid capital Meſſuage*, *and the Farm thereunto belonging*, to the ſaid *Thomas Showler*; and of *another Tenement*, part of the ſaid *capital Meſſuage*; and all of them inhabited by Families; and that one of *the Cottages* is inhabited by the ſaid *John Atter* and his Family; and another of the ſaid Cottages is inhabited by another *Day-Labourer* and his Family; and the other of the ſaid Cottages is inhabited by a *Shepherd* and his Family; and the *Tenement*, part of the ſaid *capital Meſſuage*, is inhabited by a *poor Widow* and her five Children: *all* which Occupiers of the ſaid *Cottages*, and of the ſaid *Tenement*, part of the ſaid *capital Meſſuage*, are *under Tenants* to the ſaid THOMAS SHOWLER. The Court of Seſſions therefore adjudged *Haugh* aforeſaid, to be a *Village* or *Townſhip*; and confirmed the Appointment.

To this it was Objected. 1ſt, That the Facts ſtated, ſhew this Place to be neither a *Townſhip* nor a *Village*. And, 2dly, That *Atter* appeared to be only a *Labourer*, and not a *ſubſtantial Houſholder*.

To the *firſt* it was anſwered that the Seſſions had determined right in adjudging *Haugh* a *Village*; for the Caſe ſtated it to be ſo. 1 *Inſt.* 115. defines a *Village*, as conſiſting *expluribus Manſionibus et pluribus Vicinis*. And here are *five* diſtinct Manſions, which Number anſwers to the Term "*Plures.*" And both *Spelman's Villare Anglicanum*, and *Cambden's Britannia* mention this Place *as a Village:* which is, at leaſt a reaſon for ſending the Order back to the Seſſions, in order that the Facts may be more fully ſtated. That the two Caſes cited out of Sir *John Strange's Reports*, viz. *Denham* and *Dalham*, and

Ante.

Stokeprior

Stokeprior and *Grafton*, are not applicable to the preſent Caſe; for, the former was upon an *Order of Removal*; and *Southwold-Park*, the *Extra-Parochial* Place, conſiſting of *only two* Houſes and *two* Families, which could not be called "*Plures*;" the latter was a Nobleman's Seat, converted *within time of Memory* into *five* Houſes and Farms; but that Caſe was *never argued*; and the Rule was made abſolute without Defence. KING v. SHOWLER, &c.

The COURT were clearly of Opinion that both the Orders ought to be diſcharged.

Lord MANSFIELD obſerved, that by this Method, a Place might be *made* into a *Village*, which in fact was *not ſo*; and the Inhabitants of it might by this Contrivance *withdraw* themſelves from contributing towards the Snpport of the *Poor* of their *Pariſh*. If it be really a *Vill* you may make another Appointment.

WILMOT, J. cited and laid much ſtreſs upon the Caſe of the *K. v. Welbeck*, which *Deniſon, J.* alſo ſaid he very well remembered; it was a *Mandamus* to appoint *Overſeers* in and for the *Village* of *Welbeck*; and the Return was, "That it was *Extra-Parochial*, and never was *reputed* to be a *Village* or *Townſhip*; and therefore they could not appoint any Perſons to be *Overſeers of the Poor* of it. And the Return was allowed, upon the Principle that the Court had no Power to iſſue ſuch *Mandamus*, but upon the Suppoſition of its being a *Vill* or *Townſhip*. Ante 11.

Both ORDERS quaſhed.

The Anſwer to the 2d Objection was, that the original Order *expreſsly called After* "*a ſubſtantial Houſholder*." But as the *Court* were ſo clear againſt the Orders upon the *firſt* Objection, as to allow it even without hearing the Counſel who were to argue in Support of it; this *ſecond* Objection was not diſcuſſed, nor even entered into. 1 Black. Rep. 419. S. C.

THE KING *v.* TAMWORTH, *Inhabitants of. Trin.* 17 G. III. *Cald.* 28. T. G. his Wife, and their Child, were removed from the Hamlet of *Bolehall* and *Glaſcote* in the *Pariſh* of *Tamworth*, in the County of *Warwick*, to the *Pariſh* of *Tamworth* in the Counties of *Warwick* and *Stafford*. On Appeal the Seſſions confirmed the Order, and ſtated, A Hamlet not having *Overſeers* of its own, is not within the Stat. *Car.* II. yet though never aſſeſſed before, if ſtated to be within a *Pariſh*, and to pay Church Rates, is ſubjected to all Parochial Taxes.

That the *Pauper*, T. G. was legally ſettled in the Hamlet of *Bolehall* and *Glaſcote*, and was afterwards hired for a Year, and ſerved it at *Sireſcote*, which is a Hamlet conſiſting of *one* Houſe only, and between *three and four hundred Acres of Land*. That *Sireſcote* has *never* contributed towards the Relief of the *Poor* of the *Pariſh* of *Tamworth*, nor *ever* aſſeſſed thereto; but has *always* been aſſeſſed, and has *always* paid to the Support of the *Pariſh Church* of *Tamworth*; that no *Overſeer* or *Overſeers of the Poor*, hath or have ever been appointed for the ſaid *Hamlet* of *Sireſcote*; and that the ſaid *Hamlet* lies *without* the Limits and Juriſdiction of the Borough of *Tamworth*, but is within the ſaid *Pariſh* of *Tamworth*. That the *Paupers* were delivered to the *Churchwardens* of the ſaid *Pariſh* of *Tamworth*, which *Pariſh* not only lies partly in *Warwickſhire*, and partly in *Staffordſhire*, but is a Part thereof *within* the Limits and Juriſdiction of the Borough of *Tamworth*, and Part thereof *without* the ſaid Limits and Juriſdiction.

In Support of the Orders, it was inſiſted that this *Hamlet's* never having contributed towards the general Burthens of the *Pariſh*, was immaterial, and never could be conſidered as a *Vill*, within the *Stat. Car.* II. there being only *one Houſe*, and no *Overſeers*; and cited *K. v. Denham*, the *K. v. Grafton*, and the *K. v. Showler, and another*; that this was clearly Part of the *Pariſh* of *Tamworth*, where there were proper Officers. Ante 8. 11. 12.

On the other ſide it was argued, that this was a diſtinct *Vill*, independent of the *Pariſh* of *Tamworth*, and to which no *Pauper* could be ſent, till it had Officers duly appointed: In ſeveral of the Caſes there cited, the Places there mentioned being *Extra-Parochial*, could not be conſidered as *Vills*. Here this is ſtated to be a *Hamlet*, and the *Pauper* adjudged to have gained a Settlement therein. That a *Hamlet* is a ſub-diviſion of a *Pariſh*, that may be chargeable with its own *Poor*, is apparent from the Circumſtance of *Bolehall*, the Place from whence this Removal is made, being of that deſcription; therefore *Overſeers*

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Overſeers ought to have been appointed, and the *Paupers* removed *there*, inſtead of to the *Pariſh* at large.

In ſupport of the Rights of the Owner of the Eſtate of *Sireſcote*, it was inſiſted, that there was by no Means enough ſtated to ſhew that *Sireſcote* was part of the *Pariſh* of *Tamworth*: That, though now reduced to a ſingle Houſe, it might be a *Vill*: That, though the Eccleſiaſtical Diviſion of *Pariſhes* exiſted before the *Poor Laws*, it could not reaſonably be concluded from the Payment to the *Church*, that it was within the *Pariſh*; becauſe it had, in no one Inſtance, contributed to the *Poor*, which is much the heavier Burthen; and, if due from *Sireſcote*, would have been long demanded.

Lord MANSFIELD—There is no Doubt at all. The Place is averred to be within the *Pariſh*, where the Hiring and Service were had and performed; and it is no *Townſhip* or *Vill* within the *Statute* of *Car.* II. where Officers are appointed; and therefore the Juſtices could not remove the Pauper there. The State of Places, as to the Number of Houſes, may have been different in different Caſes; but here are no Overſeers, no ſeparate OEconomy. The Adjudication is to *Sireſcote*, as *Part* of the *Pariſh* of *Tamworth*.

ASTON, J.—This Place is neither *Extra-Parochial* nor a *Vill*. In the Caſe of the *Manor of Grafton*, it was holden *no Vill*; though it had been converted into *five* Dwelling-houſes and Farms, and was occupied by *five* ſeveral Tenants.

WILLES and ASHURST, *Juſtices*, concurring,

Rule diſcharged, and both Orders affirmed.

To obtain a *Mandamus* to appoint *Overſeers*, it muſt be ſworn, that the Place in Queſtion, either is, or is reputed to be a *Vill*.

The KING *v.* the JUSTICES of BEDFORDSHIRE. *Eaſ.* 22 *G.* III. *Cald.* 167. B. R. A Rule was obtained to ſhew Cauſe why a *Mandamus* ſhould not iſſue, directed to the *Juſtices of Bedfordſhire*, to appoint an *Overſeer of the Poor* for the *Vill* of *Chickſands* in that County, upon this Affidavit:

That the *Vill* of *Chickſands* conſiſted of a *capital Manſion-houſe*, called the *Priory*, and a *large Farm-houſe thereto belonging*, of the yearly Value of £. 200, in the Occupation of Sir *George Oſborne*, Bart. and alſo of *three other large Farm-houſes*, with *three other Farms*, altogether of the further yearly Value of £. 500. That about *forty Years ago*, there was *another Farm-houſe and Farm*, in the ſaid *Vill*, but that the Houſe is now pulled down, and the Farm occupied by Sir *George Oſborne*: That in the ſaid *Vill* there was alſo a *Water-Mill*, now pulled down: That there is a *Chapel* in the ſaid *Vill* for the Celebration of Divine Service: That there immemorially has been, and now is, a *Conſtable* appointed in and for the ſaid *Vill*; and that there are within it *four ſubſtantial Houſholders*, but no *Churchwarden* or *Overſeer*. Theſe Facts were ſworn to by *Joſeph Cooper*, who had, about *forty Years* before, rented the Farm-houſe, now pulled down, together with the Farm now in the Occupation of Sir *G. Oſborne*.

Againſt the Application it was ſworn by *James Bevan*, a Tenant of Sir *George Oſborne's*, that he had lived in *Chickſands thirty-eight Years*: That it all belonged to Sir *George*: That he never knew any *Conſtable*, *Headborough*, *Tithing-man*, or other *Peace Officer*, appointed or ſworn in there, or any *Poor Rates* therein; and that it is, and ever was *Extra-Parochial*. Theſe Facts were alſo ſworn to by *John Blackford*, who became Steward to Sir *George Oſborne's* Father *forty-ſeven Years* before, and then lived in *Chickſands*; and by *Richard Greſham*, then *a Tenant* in *Chickſands*, and alſo for the laſt eleven Years Steward to Sir *George Oſborne*: That the one, formerly *as Servant* to Sir *Danvers*, the Father of Sir *George*, always uſed to execute, and the other, *as Servant* to Sir *George*, now does execute the Precepts iſſued by the *Chief Conſtable* of the Hundred of *Clifton*, in which *Chickſands* is ſituated.

And it was alſo ſworn by Sir *George Oſborne*, that ever ſince 1753 he had been *Owner* of *Chickſands*: That by *Reputation* it was formerly a *Monaſtery*, and came to the *Crown* at the Time of the *Diſſolution* of *Monaſteries*: That it never was *reputed* a *Vill*, but always deemed *Extra-Parochial*: That the *Chapel* is a *private Chapel* in his *Manſion-houſe*, not under the Juriſdiction of the *Biſhop*, and not having

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any *Burial-place* or *Chapelwardens:* That the Perſon officiating therein is nominated by the Owner of the Eſtate, upon whoſe Pleaſure his Stipend is dependant, and at whoſe Pleaſure alſo the *Chapel* is ſhut up: That Service is never performed there, when the Owner and his Family are abſent; and that the *Chapel* had been changed from one Room to another by Sir *George's* Father.

Againſt the Rule it was argued, that before the Court would interpoſe to *compel* Juſtices to act contrary to their Ideas *of Duty* on this Subject, they would require Proof, that the Place in Queſtion had at *ſome Time* been a *reputed Vill*; and that to conſtitute a *Vill*, it muſt appear that there had been at *ſome Time* a *Public Officer* of ſome known legal Deſcription therein. On the contrary, nothing appeared here more than the domeſtic OEconomy of a private Family: The *Chief Conſtable's* Precepts, the only Proceſs of a Public Nature executed within the Place, were always executed by one of the Servants of the Family; but that this Perſon was never ſworn in or appointed to any ſuch Office: That in the *King v. Grafton* it had been adjudged, *five* Houſes, without any *Parochial Officers*, or the *Reputation* of a *Vill*, would not conſtitute a *Vill*, which was the Principle laid down in the Caſe of *Denham* and *Dalham*.

Againſt the Rule.

Ante 11.

Cowper contra, admitted, that it could not be ſupported, unleſs this Place appeared to be a *Townſhip* or *Vill* under *Statute* 13 & 14 *Car.* II. yet that though it had not been *exactly* defined what theſe were, Mr. J. *Blackſtone* having ſtated, (Comm. Vol. I. 114.) *Tithings*, *Towns*, and *Vills*, to be of the ſame Signification in Law; and in *Charley's* Caſe, that "a *Vill* and a *Conſtable* are reciprocal." The Circumſtance of there being a Perſon here, who always exerciſed this Office for the Place in queſtion, was deciſive; for though it did not appear that he was appointed with the legal Formalities uſual on ſuch Occaſions, the conſtant Execution of Precepts within the *Vill* demonſtrated the Neceſſity of ſuch an Officer; and the diſpenſing with the Formalities of appointing, *&c.* was from the Deſign of the Owner of the *Vill*, to avoid the Conſequences of ſuch Appointment; which the Court would not countenance, to the Injury of the Public: That the Affidavit in ſupport of the Application was juſtified by the Preſumption ariſing from the Duty's being always done by the ſame Perſon: That the *Statute Car.* II. was made to remedy the want of Appointments of Conſtables by Lords of Manors, *&c.* in whom, of common Right, the Power was lodged: That no Caſe had gone ſo far as to ſay, that a Place circumſtanced like the preſent was not a *Vill:* That it was only ſettled that *two Houſes* would not conſtitute a *Vill*, becauſe there could be no one in ſuch a Caſe over whom *Overſeers* were to exerciſe their *Juriſdiction*, and that they muſt be for ever in Office: As to the *Chapel*, all the Tenants had conſtantly, and as of common Right, reſorted to it: That this Fact was ſtrong Evidence of its public Nature, and inconſiſtent with the Idea of its being a *private Family Chapel:* That this muſt be ſo, for the *Chapel* had formerly belonged to the *Priory* of *Chickſands:* That this Place was deſcribed as a *Vill* in *Domeſday*, and as a *Pariſh* in Extracts from the Augmentation-Office *.—That including the *Manſion* or *Priory*, the annual Value of this Property was little leſs than 800*l.* *per Annum*, which ought not, by *fineſſe*, to be exempted from bearing its Proportion of the Public Burthen; and that at any Rate, the granting this Rule could not conclude the Parties, as *Vill or no Vill*,—might be a queſtion made by a Return to the *Mandamus*, and thereby receive a ſolemn Determination.

For the Rule.

Ante 8.

3 *Salk.* 99. *Charley* having no *Conſtable*, it is no *Vill* but a *Hamlet*, for a *Vill* and a *Conſtable* are reciprocal. *P. Holt.* Ch. J.

LORD MANSFIELD. Whatever you may do hereafter, whether Facts alledged are made a Part of the Caſe, you now come upon a falſe Foundation. To ſupport this Application, it is neceſſary, that the Place ſhould be a *Vill*; but you have not ſaid, that it was *ever* ſo *reputed*, or even that you believe it to be one; and Sir *George Oſborne's* Affidavit ſays, it *never* was ſo *reputed*. You next deceive the Court by a falſe Suggeſtion, that there is a *Conſtable*, and that a *Conſtable* has been immemorially appointed. It is not true; and the Argument is only, that one *ought* to be appointed. Next, as to the *Chapel*, it is only a *private Chamber* in the Houſe; ſometimes *one* and ſometimes another, as ſuits the Conveniency of the Family, uſed for religious Purpoſes when they are in the Country, and when they remove from it,

* The Extracts duly authenticated were read by Mr. *Cowper*; but *not* having been made Part of the Affidavit, grounding the Rule, the Court would not notice them.

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it, ſhut up, or uſed indifferently with the other Parts of the Houſe, is it poſſible that this can be the *Chapel* of a *Vill?*

BULLER, *Juſtice*.—Were Mr. *Cowper*'s Doctrine well founded, the Court ought to grant a *Mandamus* to the Juſtices in the *firſt Inſtance*, to put them to a Return: But this is by no Means the Caſe; for the Court muſt have probable Ground laid before them, to ſhew that the Place is a *Vill*, or they will not interpoſe: And it is laid down in *Strange*, that it is a good Return to a *Mandamus*, that a Place is not, or ever was, *reputed* to be a *Vill*.

K. *v. Welbeck*, Ante 11.

WILLES and ASHHURST, *Juſtices*, concurring.

Rule diſcharged, with Coſts.

It muſt appear upon the Caſe ſtated, that a Place either is *legally* and *actually* a *Vill*, or at leaſt ſo *reputed* to be, to warrant an Application for a *Mandamus* to appoint *Overſeers*. The Sites and Areas of ancient Cathedrals, Colleges, and Inns of Court, are *Extra-Parochial*.

THE KING *v.* JUSTICES OF PETERBOROUGH, *Hil.* 23 *G.* III. *Cald.* 238. A Rule had been obtained to ſhew Cauſe why a *Mandamus* ſhould not iſſue directed to *Charles Tarrant*, *Dean* of *Peterborough*, and the *Reverend William Browne*, Juſtices in and for the Liberty of the *Soke* of *Peterborough*, in the County of *Northampton*, to appoint *Overſeers* of the *Poor* of a certain *Vill* or *Townſhip*, called *Peterborough Minſter*, otherwiſe the *Minſter* within the ſaid Liberty.

The Facts ſworn to in Support of the Rule were—That within or cloſe adjoining to the *City* or *Town* of *Peterborough* is a certain Place, called *Peterborough Minſter:* That it has always been *Extra-Parochial*, and always had a Number of *Poor* belonging thereto: That ſuch *Poor* had till the *Seventh* of *May* laſt been always maintained, as the *Poor* belonging to ſuch *Extra-Parochial* Place, by the Directions of the *Dean* and *Chapter* of the ſaid Place, called the *Minſter*; and out of ſome Fund belonging to them: That on the *Ninth* of *May* laſt, the Chapter Clerk of the ſaid *Dean* and *Chapter* being applied to, to receive *Eſther Key*, Widow, a Pauper, belonging to the ſaid *Extra-Parochial* Place, and who had come by Paſs to the Pariſh of *St. John Baptiſt*, within the ſaid *City* or *Town*, and Cloſe adjoining to the ſaid *Minſter*, as a *Rogue* and *Vagabond*, declared; that the ſaid *Dean* and *Chapter* had already ſo many *Poor*, that they did not know how to maintain them; and that, though this *Pauper* did belong to the *Minſter*, he ſhould not take her in, as there were no Officers appointed within the *Minſter* to whom any Order of Removal could be directed; and that he meant to avail himſelf of ſuch Want of Appointment: That upon a Statement of theſe Facts, Application was alſo made to the Defendants, and to two other Juſtices of the Peace for the *Liberty* of *Soke*, all of whom reſided within the ſaid *Extra-Parochial Place*, called the Cathedral of *Peterborough* or *Minſter*, to appoint an Officer for the ſame, and to grant their Order of Removal accordingly: That the ſaid Juſtices refuſed ſo to do, no Officer having at any Time before been appointed for ſuch Place; though it was ſworn, they believed, that the Pauper of Right belonged thereto: That the ſaid *Extra-Parochial* Place contains upwards of *Forty-ſix Acres* of Ground, known by ſeveral diſtinct Names, *viz.* the *Minſter Cloſe*, the *Minſter Square*, the *Vineyard*, &c. and together with the *Biſhops*, and *Six* Prebendal Houſes, *Twenty-five* Dwelling-Houſes at leaſt, excluſive of *Poor-Houſes*; and that theſe Houſes are inhabited, except in the Inſtance of the Biſhop and Three of the Prebendal Houſes, altogether by Laymen or by Strangers to the Cathedral, and thoſe generally Perſons of Fortune: That the ſaid *Twenty-five* Houſes contain upwards of 124 Perſons: That there are alſo in the ſaid *Extra-Parochial Place* ſeveral *Poor Houſes* containing a Number of *Poor*, who have by Birth, Marriage, or Servitude, acquired a Settlement therein; and who from ſome Fund belonging to the *Dean* and *Chapter*, receive, as a Maintenance, the Sum of Two Shillings and Eighteen Pence by the Hands of the *Chapter Clerk*, together with their Diviſion of the Sacrament Money, amounting to Six-pence *per* Week over and above the aforeſaid Payment: That there is alſo in the ſaid *Minſter* a Grammar School, with an Annual Endowment for the Support of the Maſter, payable out of ſome Fund belonging to the *Dean* and *Chapter*; by whom the ſaid Maſter is appointed: that within the ſaid *Minſter* there is a Place for the Performance of Divine Worſhip,

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Worſhip, and for the Burial of the dead; and it appears by the Regiſter there kept for the Purpoſe, and which is diſtinct and ſeparate from that of the *Pariſh Church* of *St. John Baptiſt*, and that from the Year 1756 to the End of the Year 1781, there have been Forty-two Marriages and Forty-eight Baptiſms; and from the Year 1757 to the End of the Year 1781, Fifty-eight Burials had therein: That the Land and Buildings ſituated within the ſaid *Minſter*, from a Valuation taken thereof, are of the Annual Value of 400 *l.* at leaſt: That the Arrears of Intereſt due upon the Sum of 200 *l.* lodged in the Hands of one of the Deponents in Support of this Rule in the Character of Truſtee, and which had devolved upon three poor Girls who had become chargeable to the ſaid *Extra-Parochial Place*, were demanded of him by the *Chapter Clerk* of the ſaid Cathedral or *Minſter*, and by him paid accordingly, and a Receipt given as follows:

> 6th *November*, 1782, Received of *Roger Parker*, Eſquire, the Sum of 2*l.* 3*s.* 8*d.* the Balance of his Account with *Jeremiah Stanford*, for Intereſt Money in full, to the 11th Day of *September* laſt, and to be by me applied towards the Maintenance of the three Children of the ſaid *Jeremiah Stanford*, who have become chargeable to the *Dean* and *Chapter* of *Peterborough*.
>
> NATH. HUDSON, *Chapter Clerk.*

That in the Memory of another of theſe Deponents, who was Eighty-ſix Years of Age, there had been ſeveral other Poor-Houſes inhabited within the ſaid *Extra-Parochial* Place, but that ſome of them were fallen down, and that others had been taken down by Order of the *Dean* and *Chapter*, to prevent their being inhabited.

Affidavits againſt the Rule.

Againſt the Rule it was ſworn by the Defendants, Doctor *Tarrant* and Doctor *Browne*, the Dean, and one of the Prebendaries of the Cathedral Church of *Peterborough*, that the *Precinct* or Cloſe of the Cathedral Church of *Peterborough*, deſcribed in the Affidavit in Support of the Rule, by the Name of the *Minſter*, is *Extra-Parochial*; and is not a *Townſhip* or *Vill*, or ever was *ſo reputed:* That there have been poor Perſons many Years Reſident within the ſaid *Precinct*; and that within their *Precincts* the *Dean* and *Chapter* are by their *Statutes* required to diſtribute in Charity the Sum of 20 *l.* Annually: That it appears by a Regiſter Book kept for that Purpoſe, that till the Year 1737, the aforeſaid Sum, and no more, had been Annually ſo ſupplied from the Chapter Fund; and that this Sum, together with the Sacrament Money, had been ſufficient for the Support of the Poor then belonging to, or inhabiting the ſaid *Precinct:* That it appears from the ſame Book, that in the Year 1737, this Sum proving inſufficient, a farther Sum was expended for their Relief, and that ſince that Period the Expence of maintaining the Poor belonging to the ſaid *Precinct*, has in ſome Years amounted to upwards of 80*l.* but that the *Dean* and *Chapter* have, although without any other appropriated Fund, defrayed the whole Expence: That this Burthen has tended to the Diminution of the Revenue allotted for the Stipends of the ſeveral Officers of the Cathedral, the Repairs of the Fabric, and other contingent Expences: That the Land and Buildings within the ſaid *Precinct*, excluſive of the Biſhop's Palace, and other official Houſes, belonging partly to the *Biſhop*, and partly to the *Dean* and *Chapter*; and are all (except two Houſes, which are the Property of private Perſons) occupied by their reſpective Leſſees: That there never was any *Conſtable* or other civil Officer appointed or choſen for the ſaid *Precinct* or Cloſe, or any *Overſeer of the Poor* or *Churchwarden*; nor have the Inhabitants ever contributed to the Relief of the Poor within the *Precinct*, or been called upon ſo to do: That, upon the Application made to theſe Deponents, to appoint an Overſeer of the Poor for the *Precinct* of the Cathedral Church of *Peterborough*, and to grant an Order of Removal, &c. as there appeared no Trace or Veſtige of any ſuch Office in any of the Writings or Regiſters belonging to the ſaid Church; and as no ſuch Officer or

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Churchwarden ever had, to their Knowledge, been appointed, they were of Opinion, that they had not Authority to make ſuch Appointment; and therefore declined, &c.

HOWORTH and BLAKE againſt the Application—Argued, that the *Precinct* in Queſtion, having been the Site of a religious Houſe, and now that of a Cathedral, and being altogether the Church Revenue, ſet apart for its Officers, was *Extra-Parochial*; and never ſubject to temporal Cares or *Parochial Duties:* That Places ſet apart for ſtudious Retirement only, had ever had a ſimilar Protection—that if the Bounty of the Statutes and the Humanity of the Poſſeſſors had hitherto induced them to make a *voluntary* Proviſion; they can neither in legal nor equitable Conſtruction be conſidered as obliged to ſubject themſelves for ever to thoſe Burthens; that except upon the Face of the Rule, nothing appeared to ſhew that this Place was either a *Townſhip* or a *Vill*, which was a deciſive Anſwer to the Application. —That in the *King v. Denham*, it was holden, that the Place ſhould at leaſt have the *Reputation* of a *Vill:* That nothing of this Sort appearing here, this Caſe muſt be governed by that of *The King v. Juſtices of Bedfordſhire.*

Ante. 8.

Ante 140

WALLACE *contra*, contended that, what was a *Vill* within the Act of Parliament is Matter of "Law; and by HARDWICKE, *Chief Juſtice*, in the Caſe of *Denham*, "muſt be left to the Judgment of the "Court, upon the Circumſtances of the Caſe ſtated," that calling a Place a *Vill* is not making it ſuch; that when the whole Facts that can induce a Belief or warrant a Concluſion upon the Premiſes, are brought forward for the Conſideration of the Court; what the Party ſwears, as to *Opinion* or *Reputation*, muſt be immaterial: That the Facts diſcloſed upon theſe Affidavits offered *ample* Proof, that the Place in Queſtion had been *properly* denominated a *Vill*; that excluſive of the Size of the Place and Number of Houſes, *every* Requiſite had been ſatisfied neceſſary to conſtitute a *Vill*—ſuch as the Rites of *Marriage*, *Baptiſm*, and *Burial*, conſtantly performed there; and the Privilege of adminiſtering Sacraments; compleat Evidence of *Parochiality:* That this Diſtrict having, to the great Improvement of the Revenues of the Church, been built upon, and leaſed out to *Laymen* of Fortune, not intitled to any eccleſiaſtical *Privileges* and *Immunities*, but in whoſe Families numerous Settlements by Services are acquired, the Duty of providing for them, was as ſtrong in Equity as Law—that though the Court, in the Caſe of the *Juſtices* of *Bedfordſhire*, ſaid, that they would require the Affidavits in Support of the Application, to ſay, *at leaſt*, that the Place had the *Reputation* of a *Vill*, before they would compel Juſtices to act contrary to their Ideas of Duty.—Yet that was a Caſe, *as brought before the Court by Affidavit*, in which there was a total Failure of all thoſe Circumſtances, from which the Court could at all conclude the Place to be a *Vill*.—The only Circumſtance leading that Way, was expreſsly charged by the Court to have been an Impoſition.—That all the other Caſes in the Books, in which it has been by the Court hinted at, as neceſſary, to ſtate the Place to have been a *Vill* by *Reputation*, were ſuch as were defective as to *other* Proof, from which to conclude its being actually and legally ſuch.

Ante 9.

LORD MANSFIELD. This Place comprehends no more than the Site of the Cathedral and the Area around it; and conſequently was in former Times within Sanctuary, and as ſuch, ſacred and inviolable as the Church itſelf. In modern Times to be ſure there is no ſuch thing as *Sanctuary*; but theſe Places have throughout all Ages, without Interruption, enjoyed thoſe Immunities; as *Weſtminſter-Abbey* now does, and other Places of the like Nature. The ancient Inns of Court, though not exactly upon this Principle, have alſo at all Times been privileged: And a ſimilar Exemption was not queſtioned in a late Caſe, that of the *King v. Gardner*, with reſpect to that Part of the Court and Garden-Ground of *Catharine-Hall*, in the Univerſity of *Cambridge*, which lay within the old and *Extra-Parochial* Part of that Foundation. Would you ſay that *Chriſt-Church* in *Oxford* is a *Vill*. I am not ſatisfied from this Affidavit, that this Place is a *Vill*; and the Party applying do not even call it ſo.

Comp. 79, et poſt.

BULLER,

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BULLER, *Juſtice.* As the Party applying does not venture to aſſert, that this Place had ever any *civil Officer*, or was ever even *reputed* to be a *Vill*, the *laſt* of which, where the Facts of the Caſe do not, within ſome clear Principle of Law ſhew the Place to be of that Denomination, the Court has holden to be indiſpenſibly neceſſary for the Purpoſe of founding an Application for a *Mandamus*; this Caſe falls within that which has been cited, (*The King v. Gardner*,) and the Rule muſt be pronounced accordingly.

WILLES and ASHHURST, *Juſtices*—concurring.

Rule diſcharged,
with Coſts.

Feb. 5th.

THE KING *v. Inhabitants of* EYFORD (*Gloceſterſhire*) *Hil.* 25 *Geo.* III. *MSS.* The Defendants appealed to the Seſſions againſt the Appointment of *John Player* and *Silas Wells*, ſubſtantial Houſholders of the *Village* of *Eyford*, to be *Overſeers* of *Eyford*, which Appointment was on ſuch Appeal confirmed, and the following Caſe ſtated.

An *Extra-Parochial* Place, though only conſiſting of *two* Houſes, if ſtated to be a *reputed Vill*, is within the Statute of 13 and 14 *Car.* II. and an Appointment of Overſeers for ſuch a Place, is good.

Eyford is an *Extra-Parochial Place*, conſiſting at preſent of a *Manſion-Houſe* and a *Farm-Houſe*, occupied by different Perſons, but both together, with the Eſtate thereto belonging, of the yearly Value of 600 *l.* the Property of one Perſon.—Twenty-five *Years* ago there was in the ſame Place, *a Cottage*, now gone to Decay, the Scite of which was at the Time of the hearing the ſaid Appeal covered by a Plantation: *In* 1727, *the Occupiers of the two preſent Houſes, acted as Overſeers of the Poor* of the *Hamlet* of *Eyford*, and in 1748, *W. Wanley*, the then *Owner of the Eſtate*, and *Occupier* of the *Manſion-Houſe* aforeſaid, *acknowledged himſelf to be liable to maintain certain Paupers* belonging to the ſaid *Hamlet*, by a *Certificate* duly allowed, and the *Paupers* were *accordingly relieved* by his *Tenant reſiding in the Farm-Houſe*, till within theſe Fifteen *Years*, during the latter Part of which Time the Eſtate in queſtion came into the Poſſeſſion of Mr. *Dolphin*.—Mr. *Dolphin* was a Juſtice of the Peace, and, dying, left his Widow in Poſſeſſion of the *Manſion-Houſe*—at which Time the *Farm-Houſe* was likewiſe in the Poſſeſſion of a Widow, and it is not until within theſe *Two Years*, that there has been any *ſubſtantial Houſholders* in *Eyford* qualified to ſerve as *Overſeers*.—From 1769 to the preſent Time, the Returns of Men qualified to ſerve in the *Militia* have been made to the Deputy Leiutenants, *by the preſent Occupier of the Farm-Houſe*, who ſubſcribed ſuch Returns, *as Conſtable*.—That the Perſons appointed *Overſeers* are *ſubſtantial Houſholders* in *Eyford*, occupying the *two Houſes* aforeſaid.—

A Rule having been obtained, to ſhew cauſe why the Order of Seſſions confirming this Appointment ſhould not be quaſhed.

Mr. BEARCROFT for the Appointment. The Queſtion is, Whether the *Appointment* which has been made is an illegal Appointment? The Juriſdiction is exerciſed different from *Mandamus*, *to compel Juſtices to appoint*.—The Court will ſuppoſe the Juſtices to have done right, unleſs the contrary appears on the ſtate of Facts acting as *Overſeers* ſo long ago as 1727, is Evidence of its being Right.—In 1748, a Certificate from the *then* Owner of the Eſtate (allowed by two Juſtices) owning himſelf liable to maintain the Paupers therein named, as belonging to the ſaid *Hamlet*, and who were *accordingly relieved*, is very ſtrong: And another Mark ſufficient to ſhew that it is a *Vill* is, that there is a *Conſtable*, *viz.* the *preſent Occupier*; and wherever there is a *Conſtable*, there is a *Vill.* And it is ſtated, that there are *ſubſtantial Houſholders*.

Vide poſt, 21.

Mr. CLYFFORD on the ſame Side.—It is ſufficient if a Place be a *Vill* by *Reputation*. LORD COKE ſays, that a *Vill* conſiſted "*de pluribus Manſionibus*," and it is ſufficient to anſwer that Deſcription, if there is more than one.

LORD MANSFIELD. Who are the Perſons that appeal?

Mr. CLYFFORD.—The Perſons *who are appointed*.—The Value of this Eſtate is 600*l. per Annum?* There are a great Number of Hands neceſſary to manage this Farm, and when *they* come to want; the Perſons who have had the Benefit of their Labour, ought not to be permitted to ſend them to ſeek

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their Maintenance elſewhere. *Cro. Car.* 92 HILTON *v.* PAWLE, *ante* 5.—*ibid.* 349. NICHOLS *v.* WALKER *and another.*

In the Caſe of *Denham* and *Dalham**, it is ſtated, that it did not appear that there EVER were any Perſons *appointed* to relieve the *Poor*.—LORD HARDWICKE is ſuppoſed to have ſaid, where there are only *two* Houſes, there cannot be *Overſeers*, "for *they* muſt be *perpetual Overſeers*.—That Caſe was different from this. *There* never had been any *Overſeers*.

* Ante, 6.

Suppoſe there had been formerly *ten Families*; though now reduced to *two*, the Parties from whoſe Labour much Benefit had ariſen, ſhould not for that Reaſon be deprived of their Settlement; which is the Recompence for that Labour, and the *legal* equivalent for the Benefit ariſing from their Service. Once a *Vill* always a *Vill*. *Co. Litt.* 115.

Mr. BRAGG, on the ſame Side.—In the *King v. Denham*.—LORD HARDWICKE ſays, that it was the Opinion of PARKER Ch. J. in delivering the Opinion of the Court in the Caſe of *Doulting* and *Stockland**, that Settlements may be gained in *Extra-Parochial Places*, and that *Juſtices* may exerciſe the Powers given them by the *Statutes* of the 43 *Eliz.* and the 13 and 14 *Car.* II. where there is *more* than *one* Houſe, and it comes under the *Deſcription* of a *Town* or *Vill*.—*The King v. Belvoir Caſtle*, went on an Objection in Point of Form, *viz.* the Order directed "to the *Churchwardens* "*and Overſeers* of the *Pariſh* or *Liberty* of *Belvoir*." Whereas it was particularly ſtated, that there "were *none*." *The King v. the Juſtices of Middleſex (Kentiſh Town) Peart and Weſtgarth.*—*The King v. Uttoxeter*, and *The King v. Juſtices of Bedfordſhire, (poſt.)* were all Caſes of Attempts to ſeparate *Parts* of *Pariſhes*, from other *Parts* of the ſame Pariſhes, and neither of them like this.—And in *The King v. Beſland*, there is a *dictum* of *Deniſon's* J. That, "there is no Law that ſays, there ſhall be an "Appointment of *two* or *more Overſeers*, *uno ſtatu*; it may be of *one*, as it may happen that there "is only *one ſubſtantial Houſholder* in a *ſmall Village*, if he is appointed *Overſeer*, and *another ſubſtantial* "*Houſholder* comes into the Pariſh afterwards, cannot they appoint him *alſo?*" Here there were *three* Houſes within theſe *five and twenty Years*.

* Poſt.

Ante 9.

Poſt 23.

Mr. WILSON—*Contra*.—The Queſtion is, Whether this is ſuch a *Vill*, as Juſtices are impowered to *appoint Overſeers* for, before the Statute of *Car.* II. there could be *no* Appointment of *Overſeers* in an *Extra-Parochial Place*.—And now only, if it be a *Vill*. Here the Seſſions have *not ſtated* this to be a *Vill*, even by *Reputation*.—Nor is it ſtated in *what Inſtance* the Inhabitants *acted as Overſeers*, nor that they were *ever appointed*. If Servants become chargeable to them, they cannot *remove* them, any more than have *Paupers* removed to them.

LORD MANSFIELD.—I think it ſhould go back for the Seſſions to ſtate, whether this be a *Vill by Reputation*.

BULLER J. The Juſtices muſt ſtate *as a Fact*, Whether it be a *Vill* by *Reputation?*

LORD MANSFIELD.—In the Caſe of *Denham*, the Court were very doubtful what is a *Vill*.—I am not ſatisfied, becauſe only *two* Occupiers, that there cannot be *Overſeers of the Poor*. In the Caſe of *Denham*, LORD HARDWICKE goes on the particular Circumſtances of that Caſe.—Mr. J. LEE thought a *Vill* ought, at the leaſt, to have the *Reputation* of a *Vill* or *Town*.—Under the *Statute* of *Eliz.* if only *one* Man, I don't ſee that he may not be appointed *Overſeer*.

Let it go back to have that Fact ſtated.

In *Trinity* Term following, it appeared by the *reſtated Order*, that the Seſſions had found "that *Eyford* "is a *Vill* by *Reputation*."

Mr. WILSON. I am afraid that this is concluſive upon us. We wiſh very much to try it in an Iſſue.

BULLER J. This is deciſive.

By the Court,

Let the Rule be diſcharged.

In

In the Caſe of *The King v. Sir Watts Horton, Mich.* 27 *Geo.* III. *Reported at length poſt.* It being contended, that where there is a *Conſtable*, there is neceſſarily a *Townſhip*; and in this Caſe it was agreed on both Sides, that there was a *Conſtable*.

Where there is a *Conſtable*, there is a *Townſhip*.

BULLER, J. ſaid, "it certainly is a *Townſhip*. Wherever there is a *Conſtable* there there is "a *Townſhip*. There may be a *Conſtable* for a *larger* Diſtrict than a *Townſhip*, but not for a *ſmaller*. "The Doubt in many of the Caſes, whether ſuch Place was a *Townſhip* or not, has ariſen where "there was *no Conſtable*."

THE KING *v.* RONTON-ABBEY, *Inhabitants of.*—*Hil.* 28 *Geo.* III. *B. R.* 2. *D* and *E*, 207.—*E. M.* and her two Children were removed from the Pariſh of *Eccleſhall*, to the Townſhip of the Monaſtery of *Ronton-Abbey*, in *Staffordſhire*. On Appeal to the Seſſions they confirmed the Order, and ſtated,

When the Seſſions adjudge a Place to be a *Vill* by *Reputation*, *as a Fact*, this Court is precluded from going into the Queſtion; notwithſtanding the Seſſions ſtate all the Evidence particularly, on which they formed their Opinion.

That the *Paupers* were ſettled within the Monaſtery of *Ronton-Abbey*, which is an *Extra-Parochial* Place, containing four or five Hundred Acres of Land, three Hundred and fifty of Arable and Paſture, and fifty of Wood, upon which there are now *three* Houſes, *one* a very large Farm-Houſe, occupied by Mrs. *Stubbs*; the other *two* ſmall Houſes; *one* with about an Acre of Land to it, the *other* with about four or five Roods to it, *one* of them occupied by *T. M.* a hired Servant of Mrs. *S.* and his Family; the *other* by *J. K.* a Day-Labourer, and his Wife; *M's* Houſe being diſtant about a Quarter of a Mile from Mrs. *S's* Houſe, and the other about the ſame Diſtance. Many Years ago there was a *fourth* Houſe on another Part of the Abbey-Lands, which is down. The *Extra-Parochial* Lands are called *Abbey-Lands*. There are other Lands in the adjoining Pariſhes of *Ronton* and *Seighford*, called *Monaſtery-Lands*, Part of the ſaid reſpective *Pariſhes*, and contributing reſpectively to the *Relief of the Poor* thereof. The ſeveral *Paupers* within *Ronton-Abbey*, who have received Alms, have received the ſame from the Occupiers of Land therein. Four credible Witneſſes, who have lived for many Years near *Ronton-Abbey*, declared that they never heard it called a *Townſhip* or *Vill*, nor never heard any Thing about it one Way or the other: In 1729, an Order of Removal was made, which Order of Removal taken from the Clerk of the Peace's File, was in the Words and Figures following, *to wit.* (The Order was directed to the *Churchwardens* and *Overſeers of the Poor* of the Pariſh of *Seighford*, and the *Overſeers of the Poor* of the *Liberty* of *Ronton-Monaſtery*, an *Extra-Parochial* Place within the County of *Stafford*, removing ſome *Paupers* from *Seighford* to *Ronton-Abbey.*) There was an Appeal againſt the Order, which appeared from the Clerk of the Peace's Books to have been quaſhed *generally*. In 1773, another *Pauper* was removed by another Order from the Pariſh of *Eccleſhall* to the *Liberty* of *Ronton-Monaſtery*. With this laſt mentioned Order, one *Bowers*, who was another *Overſeer* of *Eccleſhall*, took the Pauper to *Ronton-Abbey*, and offered to deliver her to Mrs. *Stubbs*, then Reſident there, who at firſt refuſed to receive her, but without aſſigning any Reaſon for ſuch Refuſal. *Bowers* then went to a Magiſtrate and procured another Order, and then returned and delivered one Copy of the Order, and the Pauper to Mrs. *Stubbs*, telling her, if ſhe did not receive her, ſhe would be liable to a Penalty of 5 *l.* Mrs. *Stubbs* then received her, and there was no Appeal againſt this laſt mentioned Order of Removal, nor did the *Pauper* ever come back into the Pariſh of *Eccleſhall*. In the Year 1779, there was another Order for removing *ſix* other *Paupers* from *Gnoſall* to *Ronton-Abbey*. Mr. *Starting* the *Overſeer* of the Pariſh of *Gnoſall*, went to *Edward Stubbs*, the Son of Mrs. *Stubbs*, then reſiding with his Mother, the ſaid Mrs. *Stubbs*, with the *Paupers*, and this laſt mentioned Order; *Edward Stubbs* ſaid we have no *Overſeer* reſiding here, but we have appointed *T. Addiſon* our *Overſeer*, and directed him to *Addiſon's* Houſe, who then reſided at *Eccleſhall*, about a Mile diſtant from the *Abbey*, but rented ſome of the *Abbey-Lands*. *Starting* then went and delivered the *Paupers* to the ſaid *T. Addiſon*, who was then *Overſeer* of *Ronton-Abbey*. Notice of Appeal was given by *Addiſon* to the Pariſh of *Gnoſall* againſt this laſt mentioned Order. The Appeal was afterwards heard, and it appeared in Evidence, that *Ronton-Abbey* did not, at the hearing of the ſaid Appeal, ſet up the Defence of their not

Vide poſt. K. *v. Alice Stubbs.*

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not being liable to maintain their own Poor; but the Appeal was quaſhed upon the Merits. Conſtables and Surveyors of High-Ways had been frequently appointed for the *Monaſtery-Lands*, but they never had any Juriſdiction over the *Abbey-Lands*; and it did not appear that any Conſtable or Surveyor had ever been appointed for the *Abbey-Lands*. *Mary Keeling*, aged eighty-nine Years, and her Huſband, lived within the *Abbey* ſixty Years ago, and he rented a Tenement there ſufficient to gain a Settlement. The ſaid *Mary Keeling*, after the Death of her Huſband, being diſtreſſed, upon Application to Mrs. *Stubbs*, has been for ſeveral Years relieved by a Piece of Land, which ſhe lett for *twenty-eight Shillings* a Year, ſo long as ſhe lived in the *Abbey*, and by a Quarterly Payment of *fifty-two Shillings* a Year, ſince ſhe went into the Pariſh of *Penkridge*; it appeared alſo, that ſome of her Family had been occaſionally relieved by the above mentioned *Addiſon*.

The Seſſions adjudged this Place to be a *Vill* by Reputation, and confirmed the Order of Removal, ſubject to the Opinion of this Court.

The COURT were of Opinion that, as the Seſſions had adjudged, *as a Fact*, that this was a *Vill* by *Reputation*, they were percluded from going into that Queſtion. On which the Counſel on both Sides ſaid, it was intended to be argued as if the Seſſions had adjudged it to be a *Vill* by *Reputation*, "on the "Evidence ſtated" in the Caſe.—But

K. *v. Eyford*, Ante 19.

Seſſions are not to ſtate *Evidence*, but *Facts*, for the Opinion of the Court.

The COURT obſerved, that the Seſſions were not to ſtate the Caſes for Purpoſe of taking the Opinion of *this Court* "on Facts;" and that in this Caſe they had diſtinctly adjudged this Place to be a *Vill*.

Therefore, without Argument,

The Rule for quaſhing the Order of Seſſions was diſcharged.

It now appearing that a PARISH, within the Meaning of the *Statute* of the 43 *Eliz.* c. 2. is a *Diviſion* at this Time very well known; and that within the Meaning of the *Statute* 13 *and* 14 *Car.* II. c. 12. a VILL muſt have a *Chapel*, not only having *Sacramentals*, but to make it *independent* of the *Pariſh*, muſt have all other *Badges*, as *Sepultures*, &c. unleſs *ſpecially found* to have been a VILL by *Reputation*:—And that a TOWNSHIP is a *Conſtabulary*, or that *Diſtrict* or *Space* over which a *Conſtable* has *Juriſdiction*. I come next, purſuing the Words of the *Statute*,

"FOUR, THREE, OR TWO," *to ſhew*,

II. *What Number (together with the* CHURCH-WARDENS) *ſhall be appointed* OVERSEERS.

VINER. *(Poor)* 415. *Trin.* 11 *Ann. B. R. Anon.* Upon a Motion to quaſh an *Indictment* againſt *B.* for that *he*, with *four* others, being appointed *Overſeers of the Poor* of ſuch a *Pariſh*, refuſed to take upon him that Office, &c. it was objected that the *Statute* directs the Nomination but of *four*, *three*, or *two*, with the *Churchwardens*. And by PARKER, Ch. J. that is very odd (*true*) though in many Places more are appointed than *four*; for the Act ſays *four*, *three*, or *two* ſhall be nominated of the Inhabitants, at the Diſcretion of the *Juſtices (ſcil.)* they may nominate *four*, *three*, or *two*; it is not a Limitation of the Juſtices Power, but it is in the very authorative Part thereof. *Where more than four are added*, they are not puniſhable by the Act, *and they can be only* added *as Aſſiſtants*.

Q. Whether an Appointment of *five* Overſeers good.

Vide K. *v.* Loxdale, Poſt.

By POWELL, J. The Queſtion will be, Whether the Words of the Act will be any more than *directory*, or a *Limitation* of their Authority? In *moſt* of the *Pariſhes* about London, there are *more* than *four*, wherefore he ſaid he need not determine this Point; but the *Indictment* was quaſhed for another Fault.

THE KING *v.* HARMAN, *E.* 12 *G.* II. B. R. *Bott.* 6. Motion to quaſh an Order of Juſtices of Appointment of Overſeers for St. *Clements Danes*, and likewiſe an Order of Seizure for *eleven* Neglects with reſpect to the ſaid Office.

Appointment of *five* Overſeers Vide K. *v. Loxdale*, poſt.

Hollings for Defendants. The Power the Juſtices have is by 43 *Eliz.* which ſays, there ſhall be *four* *three*, or *two* Perſons nominated for *Overſeers*. In the preſent Caſe *five* have been nominated. The Order of Seizure ſets forth, that Defendant was Guilty of eleven Neglects of Office, and therefore Orders 11*l.* to be levied, purſuant to the Act. It does not appear that Defendant had Notice of the Order of Appointment, before the Order of Seizure was made, the Summons ſhould have been perſonally ſerved. 5 *Mod.* 419. By the Statute the Penalty is 20*s.* for abſenting from Monthly Meetings, or being negligent in their Office. Here are *eleven* Neglects charged; but only *five* of them for abſenting from Monthly Meetings, *four* more are for abſenting from other Meetings, not within the Statute; the *tenth* is, that his Maid refuſed to take the Rate Book; and the *eleventh* is, that he refuſed to take 7*s.* 3*d.* halfpenny, for half a Year's Pariſh Rate.

Upon

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Upon ſhewing Cauſe why the Order of Appointment of Overſeers ſhould not be quaſhed.

Sir *Thomas Abney* argued, that here were three Appointments, *viz.* 18 *April*, 24 *April*, and 26 *April*, 1738, by which the Juſtices nominated *Harman*, and *four* other Perſons, for Overſeers of St. *Clements Danes*; on the *Certiorari* they have received two Summonſes, and a Warrant of Diſtreſs, but the Court will not take Notice of them, becauſe they ought not to be returned; for the Court will never quaſh *Proceſſes* of Juſtices, but only Matters of Judgment.

Sir Wm. Lee.

CHIEF JUSTICE. We cannot take Notice of the Summons, or Warrant of Diſtreſs.

Hollings. In the Warrant, there is an Adjudication, and the Court will take Notice of that.

CHIEF JUSTICE. The firſt Conſideration is the Appointment, and the next is, what is called on one Side a Warrant of Diſtreſs, and on the other Side an Order: If it is a Warrant of Diſtreſs the Court cannot take Notice of it, as in the Caſe of Bail or Recognizance: But in my Opinion, it appears on the Face of it to be an Adjudication, and as much ſo as an Order of Removal, for they *adjudge* the Party ſettled, and then there is a Warrant for his Removal. Now this is a Warrant of Diſtreſs, preceded by an Adjudication; for it recites the Neglects, and adjudges that he is guilty of them, and then directs the Diſtreſs. It cannot be determined what is an Order, but by Words of Adjudication. And taking it as an Adjudication, the Exception ſeems to be very ſtrong; for it is, that they adjudge him to be guilty of the Neglects aftermentioned. The Servant's refuſing the Rate-book, and his refuſing the Rate, without appearing by whom given, and which are ſome of the Neglects of which they adjudge him guilty; are certainly Exceptions to this Order, and being connected with others in the Order, I think, form a ſtrong Objection to it. As to the other Part of the Caſe, with reſpect to the Order of Appointment, I am doubtful whether this now comes before the Court in ſuch a Way as for the Court to quaſh it. I think it will be a different Conſideration if the Act of Parliament is to be conſtrued, whether, upon the Face of ſuch an Order where *five* are appointed, the Court can determine the Order void? But I cannot ſee how it can be called void, as to the *four* who act. *Drury's* Caſe 4 Co. (*a*) is very near this Kind of Conſtruction. But now as we can only take Notice of it upon the Order, we cannot determine which to ſtrike out, they being all equally nominated; and it differs from the Caſe of *Clerkenwell*; for here the Appointment is entire, and relates to all equally, and muſt be good or void in the whole; but as to the Appointment I have ſome Difficulty to determine upon this Return, that it is void *in toto*, which we muſt do, or confirm it *in toto*; but as to the Order or Warrant of Diſtreſs, I think the Exceptions are very ſtrong; and as they are not defended, they will be ſufficient to quaſh that Order.

(*a*) This was the Caſe of a Counteſs Dowager who retained a *third* Chaplain, who purchaſed a Diſpenſation to have two Benefices with Cure, and was advanced to them; the Queſtion was, whether he was lawfully retained under 21 H. 8. c. 13. by which it is provided, "That every Counteſs, being a Widow, may have *two* Chaplains, whereof every one may purchaſe Licence or Diſpenſation." It was reſolved, That when ſhe retained two, the Statute was executed, for ſhe could not have more than two capable to have Diſpenſation, and that the Retainer of the third *did not diveſt the other two of their Privileges.*

PAGE, J. I think *both* theſe Objections are well taken, and *both* the Orders ſhould be quaſhed. I cannot ſee that it is Diſcretionary in the Juſtices to name above *four* Overſeers. The Act of Parliament beginning with the greateſt Number, ſhewed the Extent intended: As to ſaying there are no negative Words, there is no Occaſion for them in a new Power; and the affirmative Words imply a negative; in the Caſe of Chaplains, every Man comes in ſeparately, and therefore the Retainer may be void as to ſome; but in this Caſe they appear to be all nominated at once, and it is one Act, and they are equally innocent or guilty, and it muſt be void to the whole, they having exceeded the Number of *four*. Suppoſing this Appointment to be good, the Warrant is an Order, and the Warrant is grounded upon the Order which precedes it. As to the Uſage, I think if it had been at the Time of the Act, and cotemporary with it, would have been an Expoſition, but this is at ſo great a Diſtance, that I think it cannot prevail.

Ch. J. I do not lay any Streſs upon the Uſage.

PROBYN, J. I don't think it neceſſary the Court ſhould give any Opinion upon the Appointment, for it may come before the Court in a more proper Way, by *Indictment*; but the only Conſideration is, as to the *Fines* levied by this Warrant of Diſtreſs. This is an Adjudication, for they *adjudge* the Neglect, and direct the Diſtreſs, and the Judgment and Execution may be in the ſame Inſtrument, as in Orders of Removal. Here are *eleven* Penalties for

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for *eleven* diſtinct Offences, quite different in their Nature, and they ought to be diſtinctly levied for each Offence; but here they are comprehended in *one* Judgment, and a *groſs* Sum directed for the whole. If a Man be regularly appointed, he muſt have Notice, or he cannot be charged for Neglect; as to the Maid's refuſing the Book, and his refuſing the Rate, it was not ſaid it was a Rate of the Pariſh; perhaps the Perſon who tendered it had no Authority. This is an Order, and in its Nature void, and ought to be quaſhed. Where a new Authority is created by Act of Parliament, and the Act is *particular* in its Directions, as to the Perſons *in toto* appointed, without giving an additional Latitude to the Juſtices, it cannot be ſaid that they can exceed the Number, and ſaying *ſo many* ſhall be appointed, is ſaying *no more* ſh ll be appointed. Uſages that can vary the Conſtruction of an Act of Parliament, muſt be univerſal, and not only the Uſage of a particular Pariſh. In the Caſe of *Bewdley*, it was an univerſal Uſage, and for the Neceſſity of the Thing, the Opinion of all the Judges was to ſupport that Proceeding, in regard all the Proceedings had been ſo for *ſeven* or *eight* Years paſt. General Uſages, if they are immemorial, amount to a Law; but I don't go, only as to the Time, but to the Particularity of it. As to the Caſe of *Clerkenwell*, *four* were retained, which they had a Power to do, but here *all* are involved under *one* Appointment, which the Law does not give the Court a Power to quaſh as to Part, but it muſt be good or bad *in toto*.

CHAPPLE, J. This is as much an Adjudication as any that ever came before the Court, for the Words are, that they *adjudge*, &c. As to the Number, I think it would be more reaſonable, that it ſhould be confined to the Act, than that they ſhould have a Latitude to extend beyond it. It has been held in the Court (in *Brecknack's* Caſe) that an Uſage, though ever ſo long, will not take away the Effect of a *Charter*, much leſs an *Act* of *Parliament*. I think the Adjudication is bad in every Reſpect. It is not alledged that he accepted the Office, and he is to be puniſhed for what are called Neglects, but it ſeems to me that they are all improperly called ſo, and here is an *entire* Judgment upon all. I am therefore of the ſame Opinion as to the Adjudication. It ſhould be quaſhed.

Rule abſolute for quaſhing the Order of Diſtreſs;
And the Court will conſider further of the Order.

N. B. The Determination in this Caſe as reported in 2 *Seſſ. Caſ.* 148. and from that Book taken into *Burn*, is *wrong*.—Vide *King v. Loxdale*, *poſt*. 26.

THE KING *v.* BESLAND, 19 *G.* II. B. R. *Bott.* 5. 1 *Wilſ.* 128. Two Juſtices made an Appointment of the Defendant, *only*, to be an Overſeer of the Poor; and the Appointment was confirmed by the Seſſions on Appeal. It was moved, to quaſh the Appointment, and the Order confirming it.

The Court will not quaſh the Appointment of *one* Overſeer only, but will, if applied for, grant a *Mandamus* to appoint another.

LEE, Ch. J. The Objection is, that the Juſtices here appointed only *one* ſingle Overſeer, and not *two*, according to the 43 *Eliz.* But this is no Direction as to the Manner of Nomination. The Queſtion then is, Whether, having appointed *one* Overſeer, they have acted within the Authority of that *Statute*. It don't appear but there may be another Appointment by another Order, and the Court cannot ſay they have *not* appointed another; and if they have only appointed *one*, you may have a *Mandamus* for them to appoint another? I don't ſee but this is a good Appointment. In the *King v. Harman* *, the Court were very tender in overturning that Order, and ſtrongly inclined to think that the Order was good; and I am certain, there are many Parts of the Kingdom where a *ſingle* Overſeer is appointed.

* Ante 21.

DENISON, J. Whatever the Merits were before the Seſſions, we cannot tell; we muſt determine as it appears upon the Order. There is no Law that ſays, there ſhall be an Appointment of *two* or more

Court cannot quaſh an appointment of two Perſons to be Over-

seers, though one *in fact*, be not a ſubſtantial Houſholder, but it will ſtand as the Appointment of one; *ſed quære*; *vide next Caſe*; *& K. v. Stubbs*, poſt. 32.

Overſeers *uno ſtatu*; (*ante* 20.) it may happen that there is only *one* ſubſtantial Houſholder in a ſmall Village, if he is appointed Overſeer, and another ſubſtantial Houſholder comes into the Pariſh afterwards, cannot they appoint *him* alſo? Suppoſe *two* are appointed Overſeers, and *one* of them is not a ſubſtantial Houſholder, the Court cannot quaſh the whole Appointment, then it will ſtand as in the Appointment of *one*, which could not be, if an Appointment of *one* was illegal. There is no Occaſion for the Court to give any Opinion *where* the Juſtices can appoint one Overſeer only.

Both Orders confirmed.

Not more than four Overſeers can be appointed for or in one Pariſh, unleſs it is divided into two or more Diviſions or Townſhips.

THE KING *v.* LOXDALE *et al. Hil.* 30 *G.* II. *B. R. Burn. M. S.* Vol. III. *Ed.* 16. 311. On a Rule to ſhew Cauſe why an Appointment of *five* Overſeers for the Pariſh of *St. Chad*, in *Shrewſbury*, ſhould not be quaſhed, it being objected that this Appointment was not warranted by 43 *Eliz.*

By Lord MANSFIELD, Ch. J. Upon reading the Caſe of the *King v. Harman*, (*ante* 22.) I find it was preſſed in that Caſe, that the Uſage had been, for *more* than *four* Overſeers to be appointed: And Sir *John Strange* was inſtructed to argue it on that head, on this Maxim, that *Communis error facit jus.* In the *printed Caſe* of the *King v. Harman* *, it is ſaid, the Court refuſed to quaſh the Order. But this is a Miſtake. Being deſirous to know the Uſage in a Variety of Pariſhes, we deſired the Agents to inquire what had been the Uſage in the large Pariſhes in *London* and *Weſtminſter*, and more particularly with reſpect to the other Pariſhes in *Shrewſbury*. The Reſult is, in *Shrewſbury*, it appears there are *four* Pariſhes, in which the Number of Overſeers has never exceeded *four*; but the Pariſh of *St. Chad*, in which the preſent Diſpute ariſes, has *five* for one Year only: In the Pariſh of *St. Andrew's*, *Holborn*, there are *eight* Overſeers; but then there are *three* Diviſions there, and Overſeers for each; and Orders of Removal are made from one Diviſion to another: In *St. Giles's*, *eight* Overſeers; but in 1756, only *four* appointed by the Juſtices, and *four* more ſerve voluntarily as Aſſiſtants: In other Pariſhes no more than *four*. This Account that has been given us is very ſatisfactory, for it lays the Uſage out of the Caſe, and proves it to have been the contrary Way. This brings me to conſider what are the Authorities and judicial Precedents in this Caſe. And this ſeems to be quite a new and original Caſe, on which there has never been any judicial Opinion given. There never was any *Doubt* till the *King v. Harman*; and there the Court gave no Determination on the Validity of the Appointment, as appears by the Rule "*and the Court will further conſider of the Order.*" The Caſe of the *King v. Beſland* *, was very different from this; there it was impoſſible to have more than *one* Overſeer. But there was no judicial Opinion in that Caſe, ſo that neither of theſe two Caſes hath any Determination extending to the preſent Caſe. This Caſe therefore being an *Original* one, it muſt be determined on the true Conſtruction of the 43 *Eliz.* which may be called the great Conſtitution of the Syſtem of Law concerning the Poor.

* 2 *Seſſ. Caſ.* 148. and 3 *Burn.*

* Ante 25.

To incline the Court to conſtrue this Act with a Latitude, two other Clauſes have been mentioned, that have been held merely Directory: *One* is, with reſpect to the Time of appointing: now the preciſe Time is not of the Eſſence of the Thing, where third Perſons, and innocent ones, are affected; as in the Caſe, of the Town of *Launceſton*, 1. *Roll's Abr.* 513. An Appointment *after* the Time was held to be good, rather than defeat the End of the Charter, and leave the Corporation deſtitute of a Magiſtrate by another Conſtruction. So in the Caſe of the *King v. Sparrow* and others *(poſt)* where the Overſeers were appointed more than a Month after *Eaſter*; and to have ſaid in that Caſe, that there could not have been an Appointment after the Time, would be to ſay, that there is no Remedy for the Neglect of the Juſtices to appoint within the Time. The *other* Clauſe is, to be nominated by the Juſtices *in or near*. This is a looſe, indefinite Expreſſion. If a Juſtice lives 20 Miles off, if there is none nearer, he muſt be ſaid to be near. It is a Word of Relation. I do not ſee how this Clauſe could be conſtrued otherwiſe. And though *ſome* Part of the Act ſhould be conſtrued to be Directory, yet it cannot from thence be inferred that the *whole* is ſo. It is a Rule of Conſtruction, that where Perſons as Juſtices, Commiſſioners, or the like, have a ſpecial Authority by Statute, they have no Power but under that Statute;

As to the Time of appointing them.

and

and if the Thing is done otherwiſe, and not agreeable to the ſpecial Authority, it is void. There is no Room for the Diſtinction, that there muſt be *negative* Words to circumſcribe the Power. It was ſaid at the Bar, that if a Man has a Power originally, and an Act of Parliament gives him ſomething leſs than he had before; there, without *negative* Words, the Act will not take away that which he had before. But it can never be neceſſary for the Act to ſay, a Man ſhall *not* do, what he could *not* do before. The meaning of the Legiſlature was not to leave the Juſtices in *abſolute* Diſcretion, but to *confine* their Diſcretion not to *exceed four*, nor to appoint *leſs* than *two*. There is another Rule of Conſtruction: Where there are at different Times, different Statutes made, concerning the ſame Matter, though ſome of them ſhould be expired, and not referred to by ſubſequent Statutes; yet, being in *pari materia* they ſhall *all* be taken together, and conſidered as *one* Syſtem of that Branch of poſitive Law, and giving light to one another. This has been ſo determined of the diſabling Statutes concerning Leaſes by eccleſiaſtical Perſons; ſo the Statutes relating to Bankrupts, ſome of which are temporary, are in *pari materia*, and ſhall be taken together. Thus all the Statutes ſince the Reformation concerning the Poor, I conſider as one Body of poſitive Law; and they muſt be taken together. By the 39 *Eliz.* c. 3. *four* Overſeers were to be appointed; and there was no Latitude at all. If the Queſtion had ſtood upon that Statute, the Juſtices could *not* appoint a greater Number. There is a late Inſtance: By the *Britiſh Muſeum* Act, 26 *G.* II. c. 22. the Truſtees, or the Major Part of them, were to do certain Acts. It was found impoſſible to get the major Part of them together, and they were forced to apply for a new Act, 27 *G.* II. c. 16. giving Power to the major Part of the Truſtees *then preſent*, not leſs than ſeven to do thoſe Acts. It is plain to me, that in making the 43 *Eliz.* the Legiſlature had the 39 *Eliz.* in Contemplation; they refer to it; and the 43 *Eliz.* was not to commence till the *Eaſter* following. The 39 *Eliz.* expired with the Seſſion in December: They therefore continued it till the *Eaſter* following. This clearly accounts for the Expreſſion *four*, *three*, or *two*; rather than *two*, *three*, or *four*; (for there is a great difference between theſe two Expreſſions;) and points out to a Demonſtration, what the Legiſlature meant. Pariſhes were not ſo populous then; and *four* were thought too many; and therefore 43 *Eliz.* gives a Latitude to appoint fewer, and directs the Juſtices to be governed by the Greatneſs or Smallneſs of the Pariſh. It has been contended, that the 13 and 14 *Car.* II. is a legiſlative Expoſition of the 43 *Eliz.* I do not ſee that that *Stat.* will vary the Queſtion one way or the other. That Statute is to make each Townſhip in the Nature of a ſeparate Pariſh; and ſays, that two or more Overſeers ſhall be choſen in each Townſhip. I liſtened for a Caſe to ſhew that in theſe Townſhips they could appoint *five*. Upon inquiry it does not appear that more than *two* have been appointed. The Stat. *Car.* II. refers you, as to the Appointment, to the *Stat.* 43. *Eliz.* by *expreſs* Words, and this Reference is the ſame as *repeating* the Statute. It was obſerved that there has been a greater Latitude in the Conſtruction of Statute *Car.* II. that is, that it hath been extended to Counties not therein named. But it would have been abſurd to ſay, that that Statute, reciting an Inconvenience in *Wales*, ſhould extend to ſome other Place *only*. The Statute made in the Year 1740, for the Pariſh of *St. Martin's in the Fields* has great Weight with me. This proceeded from a Conviction in thoſe that applied for the Act, that they could not appoint more than *four*. It ſhows that the Parliament thought it was a real Doubt, and that they thought it neceſſary that there ſhould be a Boundary; for they have not left it at large, but confined the Pariſh not to exceed *nine* Overſeers. There are two Acts paſſed ſince the Caſe of the *King. v. Harman*, viz. the ſaid Act for *St. Martin's*, and the 17 *G.* II. c. 3. to remedy ſome Inconveniencies relating to Overſeers, with regard to Rates and other Matters; and yet they make no Alteration in the Number of Overſeers. In the Pariſh of *St. Clement's Danes*, they have reſtrained themſelves to *four* ever ſince. And the preciſe Number is not immaterial, as was ſaid at the Bar, either to the Parties themſelves, for it is a burthenſome Office, and the more there are at the ſame time, the quicker will the Rotation be; or to the Pariſhes for whom they are Truſtees, for a Truſt is not the better diſcharged, by a greater Number than by a few. There may be more Expence

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Vide poſt.

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in a large Number. They may be obliged to divide themſelves into ſeparate *Quorums*; which is no immaterial Conſideration to the Perſons with whom they are to act. If *five* may be allowed, there will be no Boundaries, and then there will be great Inconveniences. Upon the whole, the Words are preciſe; and the Uſage, which alone occaſioned any doubt, turns out the other Way. This Appointment is not warranted by Statute 43. *Eliz.*

Mr. Juſtice *Deniſon* was of the ſame Opinion. He ſaid, that if this had been a Matter of doubt, it is ſtrange that it ſhould never have come before the Court, till the Caſe of the *King v. Harman* in the 13 *G.* II. In that Caſe they did not quaſh the Appointment, for the Sake of the Poor of that particular Pariſh. This is an original Creation of the Juriſdiction for the Maintenance of the Poor. The Number of Overſeers is the eſſential Part of the Conſtitution. Where a Juriſdiction is created by Statute, you cannot vary from it. This Office is partly miniſterial and partly judicial. The Statute of 13 and 14 *Car.* II. is tied up according to the Rules of the 43 *Eliz.* and one of the Rules is reſtraint. As it has reſted ſo long, I am of Opinion that an Appointment of *five* Overſeers cannot be warranted.

Mr. Juſtice *Foſter*. I never had a Doubt. The Court has gone hitherto upon the prudential Reaſon of not overturning the Rates of ſo many Pariſhes. In Queen *Elizabeth's* Time there were no large and populous Pariſhes in great Towns and Cities. There were indeed Pariſhes of large Extent in the Country; but they are provided for by the 13 and 14 *Car.* II. If any Inconveniences ariſe from having too few Officers in particular Pariſhes, you muſt apply to Parliament. It would produce Confuſion to have more Officers. The 43 *Eliz.* is the firſt Statute now in force, but not the firſt that provided for the Poor. It does little more than make the 9 *Eliz.* perpetual; and there were ſeveral Statutes before that.

Mr. Juſtice *Wilmot*.—The Circumſtance that made me doubt was, the Notion of an Uſage to have more than *four* Overſeers in large Pariſhes. The Words of the Act are ſo ſtrong, that had the Uſage been otherwiſe, I ſhould have doubted whether that could have controuled them; but the Uſage being to appoint *four*, it furniſhes a ſtrong Argument. And the Act for *St. Martin's* is a ſtrong Inſtance of the Senſe of the Legiſlature. The Parliament finding *two* parochial Officers, to wit, the *Churchwardens*, added *others* for the parochial Adminiſtration. The 43. *Eliz.* relaxes the 39. *Eliz.* and gives a Diſcretion within the Number of *four*. In the 18th Clauſe, with reſpect to the Iſland of *Fowlneſs* in *Eſſex* *, a Power is given to the Juſtices, to appoint ſuch a Number of Overſeers as the Exigencies of the Place ſhall require; which ſhews, that where the Legiſlature meant an indefinite Number, they have expreſſed it. In general, it would be inconvenient to have an indefinite Number; it would not leſſen the Burthen; nor would the Pariſh have a greater Security, for each Man is anſwerable only for the Money he receives, and accountable for his own Acts only. *Bott.* 9. *ſame Caſe.*

Appointment of a *ſingle* Overſeer not to be quaſhed.

Rule abſolute. Appointment quaſhed.

N. B. Sir James Burrow obſerves, that the *King v. Beſland*, was confirmed as not *neceſſarily* appearing to be a bad Order, for it might be, that *others* were appointed by *other* Orders.

Power to appoint Overſeers, &c. within the Iſland of *Fowlneſs* in the County of *Eſſex*, though not a Pariſh.

* By 43 *Eliz.* c. 2. ſ. 18. It is provided, *That whereas the Iſland of* FOWLNESS, *in the County of Eſſex, being environed with the Sea, and having a Chapel of Eaſe for the Inhabitants thereof; and yet the ſaid Iſland is no Pariſh, but the Lands in the ſame are ſituated within divers Pariſhes, far diſtant from the ſaid Iſland. Be it therefore Enacted by the Authority aforeſaid, That the ſaid Juſtices of Peace, ſhall nominate and appoint Inhabitants within the ſaid Iſland, to be Overſeers for the poor People, dwelling within the ſaid Iſland, and that both, they the ſaid Juſtices, and the ſaid Overſeers, ſhall have the ſame Power and Authority, to all Intents, Conſiderations, and Purpoſes, for the Execution of the Parts and Articles of this Act, and ſhall be ſubject to the ſame Pains and Forfeitures; and likewiſe, that the Inhabitants and Occupiers of Lands*

Lands there, ſhall be liable and chargeable to the ſame Payments, Charges, Expences, and Orders, in ſuch Manner and Form, as if the ſame Iſland were a Pariſh.

In Conſideration whereof, neither the ſaid Inhabitants or Occupiers of Land, within the ſaid Iſland, ſhall not be compelled to contribute towards the Relief of the Poor of thoſe Pariſhes, wherein their Houſes or Lands, which they occupy within the ſaid Iſland, are ſituated, for or by Reaſon of their ſaid Habitations, or Occupyings, other than for the Relief of the poor People within the ſaid Iſland, neither yet ſhall the other Inhabitants of the Pariſhes wherein ſuch Houſes or Lands are ſituated, be compelled by Reaſon of their Reſiancy or Dwelling, to contribute to the Relief of the poor Inhabitants within the ſaid Iſland.

"SUBSTANTIAL HOUSHOLDERS THERE;" *or*,

III. *Who may or may not be appointed* OVERSEERS; *and how to be deſcribed in ſuch Appointment.*

A Perſon in the Country for a *Seaſon* of the Year only, ſhall not be appointed *Overſeer*.

DALTON in his *Juſtice*, &c. 216. *Chap.* 73. *Sect.* 2. ſays, "The Juſtices of the Peace, who have "the Appointing of *Overſeers*, muſt be careful to choſe ſuch Men as in every Town are fitteſt, *viz. Sub-* "*ſtantial Perſons, who have Competency* of Wealth, Wiſdom, and good Conſcience. And they muſt be "*Houſholders*, and *not Sojourners*, however otherwiſe qualified."

THE KING *and* QUEEN *v.* MOOR. *Mich.* 2 *W. and M. R. B. Carth.* 161. *Moor* being a *Citizen* of *London*, had a *Country Houſe* in the *Pariſh* of *Hornſey*, where he uſually dwelt in the Summer Seaſon, and therefore he was choſen by the Pariſhioners to be one of the *Overſeers of the Poor* of that Pariſh; and upon his Appeal to the Quarter Seſſions, an Order was made to diſcharge him from his Office, in which Order the next two Juſtices of the Peace were required to appoint another Man in his Room.

This Order being removed into this Court by *Certiorari*, it was now moved, that it might be quaſhed, becauſe the Seſſions had nothing to do in this Matter; for the *Statute* 43 *Eliz.* gives no Appeal in this Caſe, but is poſitive that the two next Juſtices ſhall appoint, &c.

HOLT, *Ch. Juſtice*, was of Opinion, that an Appeal would not lie:

EYRE, *Juſtice*, doubted.

But becauſe this Order *did not recite*, that *Moor* was appointed *Overſeer* by the two *next* Juſtices, therefore it was not quaſhed, for the Court held, that nobody was hurt by the Order, for that it did not appear that *Moor* was legally choſen *Overſeer*, therefore the Order did not affect any Body.

But the Court ſeemed to diſcountenance the Pariſh in chuſing ſuch a Man *Overſeer*, who was Reſident there but only ſome Part of the Summer, and was actually an *Inhabitant* of another *Pariſh* in *London*.

A Woman cannot be appointed *Overſeer*. *Sed vide contra.* K. *v. Stubbs*, &c. Poſt. 32.

THE QUEEN *v.* CHARDSTOCK, *Eaſ.* 10 *Ann. Vin. Abr. Title* POOR, 415. It was moved for a *Mandamus* to *J. H.* and *J. T.* Juſtices of the Peace in the County of *Dorſet*, &c. to nominate two ſubſtantial Houſholders to be *Overſeers of the Poor* of the *Pariſh* of *Chardſtock* in the ſaid County, upon the *Statute* of 43 *Eliz.*; and there was an Affidavit, that at a Meeting of the *Pariſh* after *Eaſter* laſt, one *J. B.* and *Mary F.* were elected *Overſeers*, and at a Meeting of the *Juſtices*, they approved of Mr. *B.* and refuſed the *Woman*, as being an unfit Perſon to ſerve as *Overſeer*; and the old *Overſeers* refuſing to nominate any other, the *Juſtices* approved the ſaid *B. only*.

By POWELL, J. A *Woman is not to be an Overſeer of the Poor*; and there can be no Cuſtom in a Pariſh to put her in, becauſe of her being a *Houſe-keeper*; becauſe this is an Office created by Act of Parliament.

By PARKER, *Chief Juſtice*.—The Nomination muſt be by the *Juſtices*, and it ſeems the *Overſeers* are to continue but *one Year*. The *Pariſh* here was obſtinate, in not having another inſtead of the *Woman*; and the *Juſtices* ſhould have *nominated* one of the old ones, ſince they were ſo ſtiff; but (becauſe the Juſtices had done well in refuſing the *Woman*) he directed that they ſhould apply to the *Juſtices* to have another nominated; and if they refuſed, then to apply to the Court for a *Mandamus* the next Term.

THE

THE QUEEN *v.* ST. ANDREW'S, *Overſeers of the Poor of. Mich.* 2 *Ann. B. R.* 6 *Mod.* 77. An Order of two Juſtices for one's taking upon him the Office of *Overſeer of the Poor*, being removed, ſeveral Exceptions were taken againſt it by MOUNTAGUE: 1ſt, That it did not appear by it that the Party was an Inhabitant or a Houſe-keeper, and you will not *intend* him to be either, for it is not like the Caſe in *Hob.* 312. where a Man ſhall be *intended* to be in his Senſes, or a Witneſs credible, till the contrary appears: And the Way were for the Pariſh, to preſent theſe Officers to the Juſtices, to be by them confirmed. 2d Exception was, the Order appointed him *Overſeer of the Poor* of that Part of the Pariſh that lies in *Middleſex*, (for the Pariſh of *St. Andrew* extends both into *London* and *Middleſex*; and for this the Caſe of the *Houſe of Correction* for *Blackheath* was relied on. And the Court ſeemed to think the Appointment ought to have been for the whole Pariſh, but after, they might order him to meddle only with ſuch a Diviſion.

QUEEN *v.* ST. ANDREW'S.

THE KING *v.* SHERINGBROOK, 2 *Lord Raym.* 1394. *B. R. Eaſ. Geo.* I. An Order of *Juſtices* made for appointing the Defendant *Overſeer of the Poor*, being removed into this Court by *Certiorari*, was quaſhed upon Motion, becauſe it did not appear *by the Order*, that the Defendant, *Sheringbrook*, was *a ſubſtantial Houſholder*, which is *expreſsly* required by the Words of the Act, 43 *Eliz.* c. 2. ſ. 1. And in the ſame Town, in the *King. v. Clerkenwell*, *B. R.* an Appointment was quaſhed for the ſame Reaſon. *Foley* 4.

In an Order appointing a Perſon Overſeer of the Poor, it muſt ſet out, that he is *a ſubſtantial Houſholder.*

THE KING *v.* GREAT MARLOW, *Trin.* 13 *Geo.* I. *B. R. Foley* 5. Exception was taken to the *Appointment* of two Perſons *Overſeers of the Poor*, at the Seſſions. The Caſe was, one *Phillips* and *John Gibbons*, were appointed *Overſeers of the Poor* of the *Town of Great Marlow*, by two Juſtices of the Peace in *Eaſter Week.* There was an Appeal to the Seſſions, ſuggeſting that *Phillips* was not duly choſen, but that *A.* had a Majority of the Pariſhioners; and therefore the *Seſſions* appoint *A.* and *Gibbons Overſeers of the Poor.*

Mr. REEVES objected, that the Appointment of the Seſſions did not mention that they were *ſubſtantial Houſholders*, that the *Juſtices at Seſſions* could make no *new* Appointment, there being one before by two Juſtices *below.*

Bad, becauſe not called *ſubſtantial Houſholder*, and becauſe made by the Juſtices in Seſſions.

The Court thought the Appointment of the Seſſions to be bad on *both* Accounts, and ordered it to be quaſhed. Afterwards, Mr. LEE took Exceptions to the Appointment of *two Juſtices.*

That it was an Appointment for a *Town*, and not a *Pariſh*, *but not allowed.*

That it was an Appointment for a whole Year. The *Court* ſaid it was well enough, and if they ſhould quaſh it, there is no Appointment of this Kind that would ſtand. So held very good.

THE KING *v.* WEOBLY, *Overſeers of. Mich.* 20 *Geo.* II. *B. R.* 2. *Str.* 1261. There were *two* Sets of *Overſeers* appointed, and *both* quaſhed; *one* becauſe the Perſons appointed were deſcribed only as *principal Inhabitants*, inſtead of purſuing the Words of 43 *Eliz.* c. 2. ſ. 1. which are *ſubſtantial Houſholders:* And the other becauſe it only called them *ſubſtantial Houſholders*, without adding *there*, or in *the Pariſh*; and this too was not in the *Body* of the Appointment (as it ought to be) but only in the *Direction at the Foot of it.*—Same Reſolution ſaid to have been in the *King v. Morral*, *M.* 7 *Geo.* II. *MSS. Bott.* 2.

It is not enough, that Overſeers ſtiled *principal Inhabitants.*

HAINS *v.* HANCOCK. *Eaſ.* 3 *Ann. B. R. Note.* A Writ of Privilege was moved for to have a *Clergyman*, who appeared to have no *Cure of Souls*, privileged from the Office of *Overſeer of the Poor.*

Q. Whether a *Clergyman in that Caſe*, may have a Writ to diſcharge him from being *Overſeer.*

And

HAINS v. HANCOCK.

And though HOLT, *Chief Juſtice* ſeemed againſt it, becauſe by him their Privilege of Exemption was only extendible to their Spiritual Revenues, and if in any Caſe they were privileged, it was only from Common-Law Offices, and eſpecially if they were *without Cure*; as here; Yet the other *three* Juſtices were ſtrongly againſt him. But, however, for his Lordſhip's Satisfaction, deſired it might be ſtirred again. 1. *Lev.* 303. *Archdeacon* of *Rocheſter* had ſuch a Writ to diſcharge him from the Office of *Expenditor* for *Romney Marſh*.

N. B. "This was the Caſe of *Doctor Lee*, *B. R.* 22 *Car.* II. 1 *Vent.* 105. who having "Lands within the Level, was made an *Expenditor* by the *Commiſſioners of Sewers*; whereupon "he prayed his Writ of Privilege in this Court; and it was granted. For the *Regiſter* is "*Vir militans Deo non implicitur ſæcularibus negotiis** : And the ancient Law is, *Quod Clerici non* "*ponantur in Officia*†, *F. N. B. Clergymen* are not to ſerve in the Wars."

* *A Man religiouſly engaged, ſhall not be incumbered with ſecular Affairs.*

† *A Clerk ſhall not be placed in Offices.*

The ſame Caſe is reported in 1ſt, *Mod.* 282. *Trin.* 29 *Car.* II. and there ſaid.—"*Afterwards* RAINSFORD and MORETON only being in Court, it was ruled he ſhould be privileged, *becauſe* he is a "*Clergyman*," *F. B.* 175. *r.* But (*the Reporter ſays,*) "I think for *another Reaſon, viz.* becauſe the "Land is in Leaſe, and the Tenant, if any, ought to do the Office."

Order appointing an acting Juſtice of the Peace, and Officer on Half-Pay in the Marines, Overſeer of the Poor, quaſhed.

THE KING *v.* GAYER, ESQUIRE, *Hil.* 30 *Geo.* II. *B. R. Burr. Manſf.* 245. *James Gayer, Eſquire*, and *Benjamin Cobley*, were by Order of two Juſtices appointed *Overſeers of the Poor* of the Pariſh of *Rockbear*, in the County of *Devon*.—Which Appointment, on the Appeal of Mr. *Gayer*, the Seſſions quaſhed *as to him*, and ſtated this Caſe: "That it appearing unto them, that he had ſome "Years been, and was at the Time of the Nomination, and ſtill an *acting Juſtice of the Peace* for "the ſaid County, reſiding within the ſaid Pariſh, and a ſubſtantial Houſe-keeper there; and alſo "*a Lieutenant of Marines in his Majeſty's Service, on Half-Pay*; and that there are *other ſufficient* "ſubſtantial Houſholders within the ſaid Pariſh, for the doing ſuch Office."

Mr. NORTON having obtained a Rule to ſhew Cauſe, why the Order of Seſſions, quaſhing the Order of Appointment ſhould not be quaſhed.

The Councel on both Sides went *(at large)* into the Argument, Whether the Reaſons given were ſufficient, particularly, whether the *Office* of *Juſtice of the Peace* and the Office of *Overſeer of the Poor*, were *compatible*; and whether the Objection could be removed by appointing a *Deputy?* If it could, then, whether a *Juſtice of Peace* was *liable* to be appointed Overſeer, in order to his executing the Office by *Deputy?*

LORD MANSFIELD ſaid, the general Queſtions concerning the *Incompatibility* of *Offices*, and the *Power of appointing Deputies*, are a large Field indeed: But the preſent Queſtion ſeems to turn in a very narrow Compaſs.

The *Seſſions*, upon an Appeal, have a Right to exerciſe the *ſame Latitude of Diſcretion* in judging, who are fit to be nominated Overſeers, as the two Juſtices had. They have given their Opinion; that Mr. *Gayer* was *not* a proper Perſon. They are *not obliged* to give *any* Reaſon for their Opinion; becauſe the Legiſlature has entruſted them, upon an Appeal *, with the Power or Authority of appointing Overſeers.

* Q. Vide R. *v.* Great Marlow, Ante.

If they had given *no* Reaſon, their Order undoubtedly had been good: We muſt have *preſumed* that they acted upon *proper* Grounds.

It is true, that where the *whole* Reaſon is ſet out, and is *clearly wrong*, we may and ought to quaſh an Order *manifeſtly* made by Miſtake, upon an erroneous Foundation; but then, the bad Reaſon given, muſt appear to have been their *only* Inducement. If there may have been *other* Grounds, they ſhould be preſumed ſufficient: And the Order ought not to be ſet aſide, becauſe *ſome* of their Reaſons, *unneceſſarily* given, appear to be bad.

There

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There was *no Neceſſity* for appointing Mr. *Gayer*: The Seſſions ſtate, that there were *other* ſufficient *ſubſtantial Houſholders* within the Pariſh. They might think Mr. *Gayer*, under *all* the Circumſtances, improper *unneceſſarily* to be appointed: His being an *acting Juſtice of Peace*, reſiding within the Pariſh, and a *Lieutenant of Marines*, might be *two* Circumſtances which weighed, among *others*. But it don't follow, neither is it ſaid, that they looked upon *both*, or *either* of theſe Reaſons, as an *Exemption* from being appointed, or a *Diſability* to ſerve the Office of *Overſeer*; and that they vacated the Appointment of two Juſtices *as illegal* upon *that* Account.—The Execution of a diſcretionary Power, where it is not neceſſary to give a Reaſon, ought to be ſupported, *unleſs* the *whole* Reaſon is ſet out, and *manifeſtly wrong*. Here the *whole* Reaſon, upon which the Seſſions acted, *is not* given. They ſay, there were *other* Perſons qualified. Suppoſing Mr. *Gayer liable* to ſerve the Office, they might think him *not* ſo proper as many *others*. And therefore we are not obliged to ſay, "that the *whole* Reaſon they went upon is bad;" allowing *(for Argument)* that there aroſe *no legal* Objection to the Appointment of Mr. *Gayer*; which, I think, there is no Occaſion now to examine.

DENISON, *Juſtice*—concurred.

As Juſtices are not obliged to give *any* Reaſon, if they give *an imperfect one only*, the Court will not for that, quaſh their Orders.

They were not *obliged* to give *any* Reaſon at all: And if it be *only an imperfect one*, we ought *not* to quaſh their Orders. I remember the Caſe of the *King v. Spalding*, where the Juſtices held a Man ſettled in a Pariſh, by Reaſon of an Apprenticeſhip; not ſaying, "that he had ſerved *forty Days* in "the Pariſh, under it:" Yet the Court would not *intend* that they had done wrong.

Every Thing ſhall be *intended* in Favour of Juſtices in their Orders.

We will *intend* every Thing in Favour of the Juſtices in their Orders.

Now, here the Reaſon *does not appear* to be a *wrong* Reaſon: It is enough if they judged him an *improper* Perſon to be *Overſeer*.

FOSTER, *Juſtice*—concurred.

ORDER of Seſſions affirmed.

THE KING *v.* ALICE STUBBS *and others*. *Eaſ.* 28 *G.* III. 2 *D.* & *E.* 395. *B. R. Alice Stubbs*, Widow, *T. M.* and *J. K.* who were deſcribed to be *ſubſtantial Houſholders*, were on the 6th of *September*, 1787, appointed Overſeers of the Poor, for the Townſhip of the *Monaſtery* of *Ronton-Abbey*, in the County of *Stafford, for one Year next enſuing the Date thereof*. On Appeal to the Seſſions, this Appointment was confirmed, ſubject to the Opinion of this Court, on the following Caſe: The *Townſhip* of *Ronton-Abbey* is an *Extra-Parochial* Place, containing three Houſes only, and about four or five hundred Acres of Land. Thoſe three Houſes are reſpectively occupied by the *Appellants*. *Mrs. Stubbs* lives in the *Abbey Houſe*, and occupies the greateſt Part of the Land within the *Townſhip*. The Houſe occupied by *T. M.* is a ſmall Houſe, which he Rents, with about an Acre of Land belonging to it: He has lived in it two or three Years, with a Wife and Children, and *is poor*, and a Servant to Mrs. *S.*—*K.* is a *Labourer* and *poor*; but the Houſe in which he lives, with four or five Roods of Land is his own.

A Woman may be appointed an Overſeer of the Poor: where a Diſtrict contains only three Houſes, the Inhabitants of all three, may be appointed, notwithſtanding two of them are Labourers and Poor.

Leyceſter obtained a Rule to ſhew Cauſe why the Order of Seſſions, and the Appointment thereby confirmed, ſhould not be both quaſhed, on *three* Grounds; *Firſt*, on the Form of the Appointment, being made on the *ſixth of October, for the Year enſuing the Date thereof*; *Secondly*, becauſe one of the Perſons was a *Woman*; and *thirdly*, becauſe the other *two* were *Poor*, and therefore not within the Deſcription of the Act of Parliament, namely, *ſubſtantial Houſholders*.

Appointment of Overſeers dated in *October*, for a Year next enſuing the Date, is good, becauſe it ſhall be underſtood to be the Overſeer's Year.

Plumer, *Syer*, and *Legh*, now ſhewed Cauſe. The firſt Objection being given up, on the Authority of the *K. v. Sparrow*, (Poſt). As to the next Objection, "That a *Woman* may not be appointed Over-"ſeer;" the Stat. 43 *Eliz.* has no ſuch *Exception*. It mentions *ſubſtantial Houſholders*, which has no reference to *Sex*; and if not exempted in *expreſs* Words, neither can ſhe by any thing that may be *implied* from any Analogy to the Exemption of *Women* to ſerve other Offices. *Firſt*, there is no *neceſſary* Incapacity by reaſon of her *Sex*, which diſqualifies her from executing this Office. *Secondly*, if there were ſome Parts of the Duty, which a *Woman* could not execute *in Perſon*, ſhe may appoint a *Deputy*.

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As to the *firſt*, the principal Duties of the Office conſiſt in collecting the Poor's Rates, in ſettling the Accounts, and ſetting the Poor to Work, all which may be performed by a *Female*. A Woman is capable of ſerving almoſt all the Offices in the Kingdom; ſuch as thoſe *of Queen, Marſhall, Great-Chamberlain, Conſtable of England, Champion of England, Commiſſioner of Sewers, Governor of Workhouſe, Sexton, Returning Officer for Members of Parliament*, and *Conſtable*; the latter of which is in ſome reſpects *Judicial*. And, *ſecondly*, as to her appointing a *Deputy*, there can be no Foundation for an Objection to ſuch an Appointment. Such an Objection can only hold in Caſes where the Offices are *ſtrictly* Judicial, ſuch as that of *Lord Chancellor* or *Judge*; or where the Duty conſiſts in an *original* exerciſe of Office, not obeying the Mandates of others. It does not follow, that every Act is Judicial, becauſe the Perſon doing it, exerciſes his Judgment on it. In *Medhurſt* and *Wait*, 3 *Burr. Manſf.* 1262, where it was neceſſary to conſider how far a *High Conſtable* could appoint a *Deputy* for the purpoſe of billeting Soldiers under the Mutiny Act, LORD MANSFIELD, in conſidering what was or was not a Judicial Act, ſaid, "It is taking the Definition too large, to ſay, that every Act where the Judgment is at all exerciſed, is "a Judicial Act. A Judicial Act is ſuppoſed to be done *pendente lite* * of ſome ſort or other." Now the Office of *Overſeers of the Poor* does not fall within the Rule; for there is no inſtance in which an Overſeer is called upon to hear and determine any Matter, in the Courſe of the Office, in a *judicial Character*. The Office of Overſeer is *wholly Miniſterial*, for he acts in almoſt all Inſtances under the *Controul* and *Direction* of Juſtices of the Peace. An Office which is *principally Miniſterial*, though in *ſome Particulars Judicial*, may be executed by a *Deputy*. The Office of *Conſtable* has a great deal of Authority, much more ſo than an *Overſeer*, yet he may appoint a *Deputy*. *K. v. Clarke*. 1 *D. and E.* 679. In *Hawk. P. C.* c. 10. ſ. 37. it is ſaid, that a Cuſtom to ſerve the Office of *Conſtable* by Rotation is good, notwithſtanding "it may come to a *Woman's* Turn, ſince in ſuch Caſe ſhe may procure another "to ſerve for her." As to the *K. v. Chardſtock*, what *Powell, J.* ſaid, was an *obiter dictum*, and *Extra-Judicial*; and beſides, there was nothing in that Caſe which amounted to more than "that it was *impro-* "*per* to nominate a *Woman*, when there were other Perſons who were more competent to ſerve the "Office;" and it was not there decided that a *Woman* could *not* be appointed. In the *K. v. Gayer*, where an *acting Juſtice of the Peace*, had been appointed Overſeer. The Court confirmed the diſcretionary Power of the Juſtices at Seſſions, in vacating the Appointment of *Gayer*, not becauſe he was exempted, but becauſe there was no *Neceſſity* to appoint him. Now in this Caſe there is that *Neceſſity*; for it is ſtated, that there are only three Perſons within the Diſtrict, of whom Mrs. *Stubbs* is the moſt ſubſtantial, and therefore the more proper to be appointed; and it may be anſwered, that there is no Caſe in which ſuch an Appointment has been quaſhed, though it is the conſtant Practice, particularly in this Country for *Women* to ſerve, when a Caſe of *Neceſſity* exiſts. Beſides, in this *particular Caſe*, it ſhould be conſidered as a Reaſon for confirming this Appointment, that the Place in queſtion is *Extra-Parochial*, and liable to maintain its own Poor; (Vide *K. v. Ronton-Abbey*;) and that there can be no removal of any Pauper till *Overſeers* are appointed; and, conſequently, quaſhing this Appointment, will be to exempt the Place from maintaining its own Poor. As to the *ſecond* Objection reſpecting the want of Ability in the two Men, it muſt be taken to be *relative* Ability; and when the Statute ſpeaks of "ſubſtantial Houſholders," it muſt be qualified according to the Place for which they are to be appointed.

* "*pending a Suit.*"

LEYCESTER, *contra*, contended, that a *Woman* was *not perſonally* competent to do the Duties of the Office, nor could ſhe appoint a *Deputy*; or even if ſhe might, yet it did not follow that ſhe was *compellable* to ſerve the Office by *Deputy*. The queſtion of incompetency being general, ought not to be determined by the peculiar Circumſtances of any particular Diſtrict; nor is it any Anſwer to that Queſtion, to ſay that *Females* are included in the general Term "ſubſtantial Houſholders;" for it may equally comprehend *Idiots* or *Lunatics*; nor could it ever have been the intention of the Legiſlature to include them; for there are ſome Parts of the Office inconſiſtent with the Decency of the Sex; ſuch as

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Enquiries concerning Baſtards, and carrying the Perſon charged, before a Magiſtrate; neither have they Strength of Body or Knowledge equal to the Duties of the Station. And if a *Woman* be unequal to the due Diſcharge of theſe Duties, the Pariſh muſt be prejudiced. It has been ſaid, that in point of Fact, there are ſeveral Inſtances of *Women* having ſerved this Office in this Country; but no ſuch Inſtance is ſtated in the Caſe, nor any Determination cited to ſhew the Validity of ſuch Appointment. But if two or three Inſtances could be produced, the *acquieſcence* of a few would not eſtabliſh the Liability of all *Women*, with reſpect to *all* the Inſtances in which *Women* have ſerved other Offices; there is not the leaſt Similarity between this and either of thoſe named. As to the *Queen of England*, of all other Stations there is not one perhaps requiring leſs perſonal Exertion. And to get rid of the *Doubt*, whether the regal Office was Hereditary in a Female, the 1 *M.* Stat. 3. c. 2. was paſſed, declaring a *Female* capable of inheriting. The Reaſon why a *Female* may hold the Office of *Conſtable* of *England* is, *becauſe ſhe may appoint a Deputy*, *Dy.* 285, 6. Now that Reaſon is an Admiſſion, that if ſhe could *not* appoint a *Deputy*, ſhe could not hold the Office. So the Offices of *Great Chamberlain*, *Marſhall*, and *Champion* of *England*, are Hereditary; they are granted to a Man and his Heirs. As to the Inſtance of *Commiſſioner* of *Sewers*, it is merely the Opinion of *Callis*, for which he gives the abſurd Reaſon, that *Semiramis* governed Syria. The Office of *Sexton* is only a private Office of Truſt, to take Care of the Church, &c. and *therefore* it is ſaid, 13 *Vin. Abr.* 159. 2 *Str.* 1114. a *Woman* may ſerve it; but if there were any Thing to be done by the *Sexton*, not proper for a *Woman*, it is ſaid, it would be otherwiſe. With reſpect to the Caſe of the *Conſtable*, it is only the Opinion of Serjeant *Hawkins*, that a Cuſtom to ſerve by Rotation is good, becauſe he thought that a *Woman* might procure a *Deputy*; now this *admits* that ſhe cannot ſerve *in Perſon*, and if ſhe cannot ſerve by *Deputy*, the Cuſtom could not be ſupported. In anſwer to thoſe Caſes, it is not neceſſary to conſider how far they are Authorities, to ſhew that in certain Caſes a *Woman* may appoint a *Deputy*; but for this Part of the Argument, it is ſufficient if they prove the Incompetency of Females, to ſerve thoſe Offices in Perſon. Wherever it is ſaid that a *Woman* may hold any particular Office, it is becauſe the Office is *Miniſterial*, and becauſe, though partly *Judicial*, it is hereditary; and then ſhe may appoint a *Deputy*, (4 *Inſt.* 311.) the Office being *Miniſterial*, (4 *Inſt.* 293.) The Incompetency of *Woman* extends to a Variety of Caſes; they cannot ſerve on Juries, vote for Members of Parliament, (4 *Inſt.* 5.) nor ſit in Parliament themſelves. Then as to this Office in particular, the *K. v. Chardſtock* is deciſive, and the Authority of it ſtands uncontradicted. *Secondly*, an Officer who acts merely *Miniſterial*, may appoint a *Deputy*, but a judicial Officer cannot, 1 *Ro. Rep.* 274. neither can a *Deputy* be appointed, where the Office is (ſtrictly ſpeaking) neither *Miniſterial* nor *Judicial*, but an Office of Truſt and Diſcretion; and the Office of *Overſeer of the Poor* is of that Deſcription. It is ſaid in *Bro. Abr.* tit. *Deputie*, pl. 9.—tit. *Graunt*, pl. 108.—tit. *Patent*, pl. 66.—and Sir *W. Jones*, 113. that an Office of Truſt cannot be aſſigned, neither can it be executed by *Deputy*, unleſs Power be expreſsly given for that Purpoſe *Co. Lit.* ſ. 379. A Steward cannot appoint a *Deputy* without Power, 9 *Co.* 48. nor the Clerk of the Papers, *Freeman*, 429. The Office of *High Conſtable* of *England* is expreſsly granted to be exerciſed by himſelf or his ſufficient *Deputy*. All the Offices mentioned on the other ſide (except one) are either *Miniſterial* or *Hereditary*, in both which Caſes a *Deputy* may be appointed. The Inſtance indeed of a *Conſtable's* appointing a *Deputy*, if it be Law forms an Exception to the general Rule. But it is much to be doubted whether that has ever been ſolemnly determined. The Caſe of *Phelps v. Winchcombe*, 3 *Rulſtr.* 77. is the Foundation of all other Caſes on this Point; it was adjourned over, and no Judgment given; and though this Caſe was cited in the Argument, in 1 *Sid.* 355. the Court were not agreed whether a *Conſtable* could or could not appoint a *Deputy*. *Hawkins*, *P. C.* c. 10. ſ. 36. ſays, "Inaſmuch as the Office of *Conſtable* is wholly *Miniſterial*, and no way "*Judicial*, it ſeems he may appoint a *Deputy* to execute a Warrant directed to him, when by reaſon of "Sickneſs, &c. he cannot do it himſelf;" yet I do not find it ſettled, that a *Conſtable* can make a *Deputy* without ſome ſpecial Cauſe. So in the Caſe in *Burr.* 1259, it was not conſidered as a ſettled

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As to the *firſt*, the principal Duties of the Office conſiſt in collecting the Poor's Rates, in ſettling the Accounts, and ſetting the Poor to Work, all which may be performed by a *Female*. A Woman is capable of ſerving almoſt all the Offices in the Kingdom; ſuch as thoſe *of Queen, Marſhall, Great-Chamberlain, Conſtable of England, Champion of England, Commiſſioner of Sewers, Governor of Workhouſe, Sexton, Returning Officer for Members of Parliament*, and *Conſtable*; the latter of which is in ſome reſpects *Judicial*. And, *ſecondly*, as to her appointing a *Deputy*, there can be no Foundation for an Objection to ſuch an Appointment. Such an Objection can only hold in Caſes where the Offices are *ſtrictly* Judicial, ſuch as that of *Lord Chancellor* or *Judge*; or where the Duty conſiſts in an *original* exerciſe of Office, not obeying the Mandates of others. It does not follow, that every Act is Judicial, becauſe the Perſon doing it, exerciſes his Judgment on it. In *Medhurſt* and *Wait*, 3 *Burr. Manſf.* 1262, where it was neceſſary to conſider how far a *High Conſtable* could appoint a *Deputy* for the purpoſe of billeting Soldiers under the Mutiny Act, LORD MANSFIELD, in conſidering what was or was not a Judicial Act, ſaid, "It is taking the Definition too large, to ſay, that every Act where the Judgment is at all exerciſed, is "a Judicial Act. A Judicial Act is ſuppoſed to be done *pendente lite* * of ſome ſort or other." Now the Office of *Overſeers of the Poor* does not fall within the Rule; for there is no inſtance in which an Overſeer is called upon to hear and determine any Matter, in the Courſe of the Office, in a *judicial Character*. The Office of Overſeer is *wholly Miniſterial*, for he acts in almoſt all Inſtances under the *Controul* and *Direction* of Juſtices of the Peace. An Office which is *principally Miniſterial*, though in *ſome Particulars Judicial*, may be executed by a *Deputy*. The Office of *Conſtable* has a great deal of Authority, much more ſo than an *Overſeer*, yet he may appoint a *Deputy*. *K. v. Clarke*. 1 *D. and E.* 679. In *Hawk. P. C.* c. 10. ſ. 37. it is ſaid, that a Cuſtom to ſerve the Office of *Conſtable* by Rotation is good, notwithſtanding "it may come to a *Woman's* Turn, ſince in ſuch Caſe ſhe may procure another "to ſerve for her." As to the *K. v. Chardſtock*, what *Powell, J.* ſaid, was an *obiter dictum*, and *Extra-Judicial*; and beſides, there was nothing in that Caſe which amounted to more than "that it was *impro-* "*per* to nominate a *Woman*, when there were other Perſons who were more competent to ſerve the "Office;" and it was not there decided that a *Woman* could *not* be appointed. In the *K. v. Gayer*, where an *acting Juſtice of the Peace*, had been appointed Overſeer. The Court confirmed the diſcretionary Power of the Juſtices at Seſſions, in vacating the Appointment of *Gayer*, not becauſe he was exempted, but becauſe there was no *Neceſſity* to appoint him. Now in this Caſe there is that *Neceſſity*; for it is ſtated, that there are only three Perſons within the Diſtrict, of whom Mrs. *Stubbs* is the moſt ſubſtantial, and therefore the more proper to be appointed; and it may be anſwered, that there is no Caſe in which ſuch an Appointment has been quaſhed, though it is the conſtant Practice, particularly in this Country for *Women* to ſerve, when a Caſe of *Neceſſity* exiſts. Beſides, in this *particular Caſe*, it ſhould be conſidered as a Reaſon for confirming this Appointment, that the Place in queſtion is *Extra-Parochial*, and liable to maintain its own Poor; (Vide *K. v. Ronton-Abbey*;) and that there can be no removal of any Pauper till *Overſeers* are appointed; and, conſequently, quaſhing this Appointment, will be to exempt the Place from maintaining its own Poor. As to the *ſecond* Objection reſpecting the want of Ability in the two Men, it muſt be taken to be *relative* Ability; and when the Statute ſpeaks of "ſubſtantial Houſholders," it muſt be qualified according to the Place for which they are to be appointed.

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LEYCESTER, *contra*, contended, that a *Woman* was *not perſonally* competent to do the Duties of the Office, nor could ſhe appoint a *Deputy*; or even if ſhe might, yet it did not follow that ſhe was *compellable* to ſerve the Office by *Deputy*. The queſtion of incompetency being general, ought not to be determined by the peculiar Circumſtances of any particular Diſtrict; nor is it any Anſwer to that Queſtion, to ſay that *Females* are included in the general Term "ſubſtantial Houſholders;" for it may equally comprehend *Idiots* or *Lunatics*; nor could it ever have been the intention of the Legiſlature to include them; for there are ſome Parts of the Office inconſiſtent with the Decency of the Sex; ſuch as

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Enquiries concerning Baſtards, and carrying the Perſon charged, before a Magiſtrate; neither have they Strength of Body or Knowledge equal to the Duties of the Station. And if a *Woman* be unequal to the due Diſcharge of theſe Duties, the Pariſh muſt be prejudiced. It has been ſaid, that in point of Fact, there are ſeveral Inſtances of *Women* having ſerved this Office in this Country; but no ſuch Inſtance is ſtated in the Caſe, nor any Determination cited to ſhew the Validity of ſuch Appointment. But if two or three Inſtances could be produced, the *acquieſcence* of a few would not eſtabliſh the Liability of all *Women*, with reſpect to *all* the Inſtances in which *Women* have ſerved other Offices; there is not the leaſt Similarity between this and either of thoſe named. As to the *Queen of England*, of all other Stations there is not one perhaps requiring leſs perſonal Exertion. And to get rid of the *Doubt*, whether the regal Office was Hereditary in a Female, the 1 *M.* Stat. 3. c. 2. was paſſed, declaring a *Female* capable of inheriting. The Reaſon why a *Female* may hold the Office of *Conſtable* of *England* is, *becauſe ſhe may appoint a Deputy*, *Dy.* 285, 6. Now that Reaſon is an Admiſſion, that if ſhe could *not* appoint a *Deputy*, ſhe could not hold the Office. So the Offices of *Great Chamberlain*, *Marſhall*, and *Champion* of *England*, are Hereditary; they are granted to a Man and his Heirs. As to the Inſtance of *Commiſſioner* of *Sewers*, it is merely the Opinion of *Callis*, for which he gives the abſurd Reaſon, that *Semiramis* governed Syria. The Office of *Sexton* is only a private Office of Truſt, to take Care of the Church, &c. and *therefore* it is ſaid, 13 *Vin. Abr.* 159. 2 *Str.* 1114. a *Woman* may ſerve it; but if there were any Thing to be done by the *Sexton*, not proper for a *Woman*, it is ſaid, it would be otherwiſe. With reſpect to the Caſe of the *Conſtable*, it is only the Opinion of Serjeant *Hawkins*, that a Cuſtom to ſerve by Rotation is good, becauſe he thought that a *Woman* might procure a *Deputy*; now this *admits* that ſhe cannot ſerve *in Perſon*, and if ſhe cannot ſerve by *Deputy*, the Cuſtom could not be ſupported. In anſwer to thoſe Caſes, it is not neceſſary to conſider how far they are Authorities, to ſhew that in certain Caſes a *Woman* may appoint a *Deputy*; but for this Part of the Argument, it is ſufficient if they prove the Incompetency of Females, to ſerve thoſe Offices in Perſon. Wherever it is ſaid that a *Woman* may hold any particular Office, it is becauſe the Office is *Miniſterial*, and becauſe, though partly *Judicial*, it is hereditary; and then ſhe may appoint a *Deputy*, (4 *Inſt.* 311.) the Office being *Miniſterial*, (4 *Inſt.* 293.) The Incompetency of *Woman* extends to a Variety of Caſes; they cannot ſerve on Juries, vote for Members of Parliament, (4 *Inſt.* 5.) nor ſit in Parliament themſelves. Then as to this Office in particular, the *K. v. Chardſtock* is deciſive, and the Authority of it ſtands uncontradicted. *Secondly*, an Officer who acts merely *Miniſterial*, may appoint a *Deputy*, but a judicial Officer cannot, 1 *Ro. Rep.* 274. neither can a *Deputy* be appointed, where the Office is (ſtrictly ſpeaking) neither *Miniſterial* nor *Judicial*, but an Office of Truſt and Diſcretion; and the Office of *Overſeer of the Poor* is of that Deſcription. It is ſaid in *Bro. Abr.* tit. *Deputie*, pl. 9.—tit. *Graunt*, pl. 108.—tit. *Patent*, pl. 66.—and Sir *W. Jones*, 113. that an Office of Truſt cannot be aſſigned, neither can it be executed by *Deputy*, unleſs Power be expreſsly given for that Purpoſe *Co. Lit.* ſ. 379. A Steward cannot appoint a *Deputy* without Power, 9 *Co.* 48. nor the Clerk of the Papers, *Freeman*, 429. The Office of *High Conſtable* of *England* is expreſsly granted to be exerciſed by himſelf or his ſufficient *Deputy*. All the Offices mentioned on the other ſide (except one) are either *Miniſterial* or *Hereditary*, in both which Caſes a *Deputy* may be appointed. The Inſtance indeed of a *Conſtable's* appointing a *Deputy*, if it be Law forms an Exception to the general Rule. But it is much to be doubted whether that has ever been ſolemnly determined. The Caſe of *Phelps v. Winchcombe*, 3 *Bulſtr.* 77. is the Foundation of all other Caſes on this Point; it was adjourned over, and no Judgment given; and though this Caſe was cited in the Argument, in 1 *Sid.* 355. the Court were not agreed whether a *Conſtable* could or could not appoint a *Deputy*. *Hawkins*, *P. C.* c. 10. ſ. 36. ſays, "Inaſmuch as the Office of *Conſtable* is wholly *Miniſterial*, and no way "*Judicial*, it ſeems he may appoint a *Deputy* to execute a Warrant directed to him, when by reaſon of "Sickneſs, &c. he cannot do it himſelf;" yet I do not find it ſettled, that a *Conſtable* can make a *Deputy* without ſome ſpecial Cauſe. So in the Caſe in *Burr.* 1259, it was not conſidered as a ſettled

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Point that a *Conſtable* could appoint a *Deputy* to execute all the Duties of the Office; but the Court thought, that for the particular Purpoſe then in queſtion, which was merely *Miniſterial*, he might. And in the Caſe of the *K. v. Clarke*, it was taken for granted, without conſidering whether or no, it had ever been decided. In *Cro. Car.* 389. where a Cuſtom was ſet up to elect a *Conſtable* or *Tithing-man* in Rotation, was held bad; "*for then a Woman, being an Inhabitant, may come in her Courſe to be Conſtable,* "*which the Law will not permit.*" But, at all events, even if it were eſtabliſhed, that a *Conſtable* could appoint a *Deputy*, that ſingle Inſtance would not out-weigh all the others. And it would not follow, that an *Overſeer of the Poor* could appoint a *Deputy*, becauſe a *Conſtable* might, for the latter Office is *Miniſterial*, and the former an Office of *Truſt and Diſcretion*; ſince he is to exerciſe a Judgment on the Propriety of relieving the Poor, to puniſh the Idle, to make Aſſeſſments, and to have the Application of them. There is likewiſe another Diſtinction between the Offices of *Conſtable* and *Overſeer*; the former is a Common-law Officer, and his *Deputy* may be ſworn in as *Principal*; but an *Overſeer* is created by Act of Parliament, which gives no Power to appoint a *Deputy*. And if it were allowed to an *Overſeer* to appoint a *Deputy*, the Statute, which with great Caution expreſsly requires *ſubſtantial Houſholders*, would be evaded. And though the Principal in ſuch Caſe might be held anſwerable for the *Money*, that would not obviate the Miſchiefs ariſing from an improper exerciſe of Diſcretion. But excluſively of any Inference which is to be drawn from this Act of Parliament, the Legiſlature themſelves thought that an *Overſeer* could not appoint a *Deputy*; for it is enacted by 1 *W. & M.* c. 18. that *Diſſenters*, who may be choſen *Overſeers*, may appoint *Deputies*. *Thirdly*, It does not follow, that though a Woman *may* appoint a *Deputy Overſeer of the Poor*, ſhe herſelf ſhall be appointed the Principal, and be *compellable* to appoint a *Deputy*, 2 *Inſt.* 34. if ſhe be competent to ſerve the Office *herſelf*, it would be making her reſponſible for the Acts of her *Deputy*, when ſhe, as *Principal*, is not liable to be placed in ſuch a Station of Reſponſibility. *Stone's* Caſe, 1 *Lev.* 265. So in *Abdy's* Caſe, where the Objection, that he might execute the Office of *Conſtable*, (which it ſeems was ſerved in the Diſtrict, under a Cuſtom, by Rotation) *by Deputy*, was over-ruled. So in the Caſe of the *Vicar* of *Dartford*, 2 Str. 1107. All this Doctrine is recognized in 2 *Hawk. P. C.* c. 10. ſ. 39. No Caſe has been cited to ſhew, that a Perſon is *compellable* to accept an Office, merely becauſe he may appoint a *Deputy*; in the Inſtances cited of the *Great Chamberlain*, *Earl Marſhall*, &c. who have the Power of appointing Deputies, it is only ſaid, that they *may*, not that they *muſt* appoint them. And there are Profits, &c. annexed to thoſe Offices, which would make it deſirable to the *Principals*, to be able to appoint *Deputies*. But no Argument can be drawn from any particular Inſtances of Offices of Dignity, or which are Lucrative, to ſhew that in other Caſes where the Office is not of that Deſcription, the *Principal* ſhall be compelled to accept the Office, and appoint a *Deputy*, he being himſelf incompetent to execute it in Perſon. Now this is a burthenſome Office; and therefore the Authorities apply ſtronger in its Favour: beſides, to compel an incompetent or privileged Perſon, to appoint a *Deputy*, would be to deſtroy all Privileges and Exemptions whatever. And yet there are many Caſes in which Exemptions have been actually allowed.

The *Stat.* 43 *Eliz.* requires, that the Perſons to be appointed *Overſeers of the Poor*, ſhall be "ſub-"ſtantial Houſholders;" and as they can only be appointed by virtue of this Act, it muſt be ſtrictly purſued. In the *King v. Sheringbrook*, and the *King v. Great Marlow*, the Orders were quaſhed, becauſe it did not appear that the Perſons appointed were "ſubſtantial Houſholders," and becauſe, inſtead thereof, they were called "principal Inhabitants;" the Appointment was quaſhed in the *King v. Weobly*.—Then if it be neceſſary to ſtate it in the Order, it is neceſſary to prove it, or at leaſt it ſhould not be negatived. Therefore, even though "ſubſtantial," were a relative Term, that will not aſſiſt the Proſecutor in this Caſe, becauſe it is expreſsly ſtated, that theſe two Men are poor Perſons; it may perhaps be difficult to define what *is* "ſubſtantial" within this Act; but it is ſufficient to ſay, that, in this Caſe, theſe Perſons are ſtated *not to be* "ſubſtantial," and the Office of *Overſeer*

Ante. 29, 30.

Ante. 30.

of

of the Poor is of great Importance; great Truſt is repoſed in him; and therefore the Statute requires that he ſhould be of "Subſtance and Reſponſibility."

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THE COURT TOOK TIME TO CONSIDER.

Afterwards ASHURST, *Juſtice*, delivered the Opinion of the Court. *Three* Objections have been made; *firſt*, to the Form of the Appointment of Overſeers, it being made on the 6th of *October*, by which the *Ouerſeers* are appointed for *one whole Year from the Date thereof*.—*Secondly*, That one of the Perſons appointed was a *Woman*, who, as ſuch, could not legally be appointed to ſuch an Office.—*Thirdly*, That the other *two* were not "ſubſtantial Houſholders," and therefore could not *legally* be appointed.

As to the *firſt*, it was diſpoſed of in the Courſe of the Argument; it being determined, in *The King v. Sparrow*, that ſuch an Appointment is good. As to the *ſecond*, we think that the Circumſtance of *one* of the Perſons appointed being a *Woman*, does not *vitiate* the Appointment: The only Qualification required by 43 *Eliz.* is, that they ſhall be *ſubſtantial Houſholders*; it has no Reference to *Sex*. The only Queſtion then is, Whether there is any Thing in the Nature of the Office, that ſhould make Women incompetent? And we think there is *not*.—There are many Inſtances where, in Offices of a higher Nature, they are held *not* to be diſqualified; as in the Caſe of the Office of *High-Chamberlain*, *High-Conſtable*, and *Marſhall*; and that no *common Conſtable*, which is both an Office of *Truſt*, and likewiſe, in a Degree, *judicial*. So in the Caſe of the Office of *Sexton*.—As to the Caſe in *Viner*, *Title* POOR, 415. that is no *concluſive* Authority. It is to be collected from the Caſe, that there were other Perſons in the Pariſh proper to ſerve; and, if ſo, the Court held that the Juſtices had not acted *improperly* in refuſing to approve of a *Woman*; where there are a ſufficient Number of Men qualified to ſerve the Office, they are certainly more proper; but that is not the Caſe here; and therefore, if there is no abſolute *Incapacity*, it is *proper* in this Inſtance, from the *Neceſſity* of the Caſe. And there is no Danger of making it a general Practiſe; for as the Juſtices are inveſted with a general diſcretionary Power of Approbation, it is not likely they will approve of ſuch an Appointment, when there are other proper Objects. As to the *third* Objection, with reſpect to the two other Perſons appointed, we think there is no Foundation for it in this Inſtance.—The Word "ſubſtantial" is a *relative* Term. If there were a great many *opulent Farmers*, there the Appointment of a *Day-Labourer* might be improper; but here there were no other Perſons to ſerve. They are both *Houſholders*, with ſome Land annexed to their Houſes, and one of them a Proprietor.

Women may be appointed to the Office of *common Conſtable* and *Sexton*.

The Word "ſubſtantial," in the 43 *Eliz.* is ſo far a *relative* Term, that *Day-Labourers* may be appointed *Overſeers*, in a Place where there are none others to ſerve.

No better Perſons can be had than the Place affords; and the Want of them is no Reaſon why the Poor ſhould not be provided for. Therefore we are all of Opinion, that the Appointment ought to be allowed, and the

Order of Seſſions confirmed.

By the 26 *Geo.* III. c. 107. ſ. 130. *No Serjeant, Corporal, Drummer, nor any Private, from the Time of his Enrollment, until diſcharged, ſhall be compelled to ſerve as a Peace or Pariſh Officer*, &c.

No Serjeant, &c. in the Militia, to ſerve Pariſh Offices.

But as *Doctor* BURN obſerves, the Act provides no Exemptions for the Officers.

By the 18 *Geo.* II. c. 15. ſ. 10. *All Freemen of the Company of Surgeons incorporated by this Act, who have been or ſhall be examined and approved purſuant to the Rules of the ſaid Company, for ſo long Time as they ſhall uſe the Art or Science of Surgery, ſhall be exempted from the Offices of Conſtable, Scavenger, Overſeer of the Poor, and all other Pariſh, Ward, and Leet Offices, and from ſerving upon on any Jury, Leet, or Inqueſt: And if any ſuch Perſon ſhall be choſen into any of the ſaid Offices, or returned to any Jury, or Inqueſt, or be diſturbed by Reaſon thereof, ſuch Perſon producing a Teſtimonial, under the common Seal of the ſaid Corporation, of his Examination, Approbation, and Freedom, to the Perſon by whom he ſhall be ſo appointed, or by or before whom he ſhall be ſummoned, ſhall be diſcharged from the ſame.*

Nor Surgeons.

PROUSE'S

Attornies and Officers of this Court, privileged from ſerving Pariſh Offices. Vide alſo next Caſe;

PROUSE's *Caſe*, *Mich.* 10 *Car. B. R. Cro.* 389. *Prouſe*, an Attorney of the *King's Bench*, was elected *Tithing-man* of *Taunton*: In which *Town* a Cuſtom is pretended to be, that every one ſhall be a *Conſtable* or *Tithing-man*, according to their ſeveral Houſes; and he having purchaſed two Houſes in the ſame *Town*, was, in a Leet there held, elected *Tithing-man*: And thereupon he brought a Writ of Privilege to be diſcharged, becauſe he is to be Attendant in this Court. But the *Juſtices of the Peace* would not allow thereof, but deſired the Juſtices of Aſſize to direct whether it ſhould be allowed, who would not meddle therewith, but ordered, it ſhould be moved in this Court: Whereupon MAYNARD now moved, that this Writ is not to be allowed; for though, in Truth, Attornies and Clerks of the Court have ſuch a Privilege to be diſcharged when they are *generally* elected, becauſe their Attendance being required here, they ſhall not be compelled to attend ſuch an Office; yet when there is a ſpecial Cuſtom, that they ſhall be elected in Courſe, according to the Situation of their Houſes, that Cuſtom ought to prevail againſt ſuch Privilege: For otherwiſe, one Attorney may purchaſe many of the Houſes in the *Town*, and then there ſhall not be ſufficient Perſons to do the Service: As in Truth in this Caſe, he hath purchaſed *ſeven* Houſes in the ſaid *Vill*, wherefore he ought to be charged. But all the COURT held, that it cannot be a good Cuſtom; for then *a Woman* being an Inhabitant in one of the ſaid Houſes, it may come to her Courſe to be *Conſtable*, which the Law will not permit. So this Cuſtom pretended, cannot hold Place againſt a Perſon, who is, by this Office, to be Attendant here: Whereupon it was ordered, that he ſhould be diſcharged.

though Cuſtom in the Pariſh to elect in Rotation.

N. B. Though this is not a *direct* Authority, that *Attornies* are exempt from the Office of *Overſeers of the Poor*, yet it was ſo far conſidered ſuch, as to have inclined the Court in determining the next Caſe, to pronounce them, on the *Principle* of this Caſe, diſcharged from other Pariſh Offices.

Alderman of London, as well as Attornies, &c. privileged from ſerving Pariſh Offices.

ABDY, *Alderman of London's Caſe. Trin.* 16 *Cam. B. R. Cro.* 585. *John Abdy, an Alderman of London*, having an Houſe at ———, in the County of *Eſſex*, where it was pretended that *Conſtables* ſhould be elected out of the *Inhabitants* in every Houſe, by Preſentment every Year in the Leet of Sir *William Hicks*, Lord of the Manor and Leets there. The ſaid *Alderman Abdy*, by the Name of *John Abdy, Eſquire*, was nominated in a *Leet* holden ſuch a Day, to be *Conſtable* there for the Year following. And becauſe he refuſed, one *John Duke* being Steward there, impoſed a Fine upon him, and denied him his Privilege to be freed, by Reaſon of his being an Alderman; whereupon this being ſuggeſted, it was moved, to have a Writ out of this Court, directed to the Lord of the ſaid Menor, or his Steward, to diſcharge him, becauſe he being an *Alderman of London*, ought to be there reſident the greateſt Part of the Year, and if abſent is finable.—And all the *Court* held, that he ought to be diſcharged by his *Privilege*, as *Attornies* attending in *Courts* are diſcharged of ſuch Offices as *Conſtables* and other Offices in the Pariſh. And although it was ſaid, he might execute it by *Deputy*, and his perſonal Attendance is not requiſite by the Cuſtom of the ſaid Manor. Yet not allowed; whereupon it was awarded, that a Writ ſhould be directed to the Lord of the ſaid *Manor* to diſcharge him.

It is ſaid, an *Attorney* ſhall not be excuſed by *Privilege* from Offices which may be executed by *Deputy*, but only thoſe which require *perſonal* Duty, as *Churchwarden*, *Conſtable*, &c. 2 *Lill. Abr.* 374.

By the 5 *Hen.* VIII. c. 6. *The Wardens and Fellowſhip of Surgeons in London, ſhall be diſcharged of Conſtableſhip, Watch, and all Manner of Office bearing Armour, and alſo of Inqueſts and Juries in London.*

Phyſicians mentioned in this Act, exempted from Offices in the *City of London*.

By the 52 *Hen.* VIII. c. 40. *The Preſident of the Commonalty and Fellowſhip of Phyſicians, and the Commons and Fellows of the ſame, ſhall be diſcharged to keep Watch and Ward in London, and ſhall not be choſen Conſtable or any other Officer in the City*, ſ. 1.

Yet

Yet it ſeems to have been holden, that the Equity of this Act, doth not extend to *other* Phyſicians not mentioned in it; perhaps for this Reaſon, becauſe Phyſicians have no ſpecial Cuſtom for their Diſcharge, as Surgeons are ſaid to have. 2. *Hawk.* 64.

Q. Whether any others are?

And it ſeemeth that a practiſing Phyſician, being choſen *Conſtable* in purſuance of a Cuſtom in reſpect of his Lands in a Town, has no Remedy for his Diſcharge; for that there are no Precedents of this Kind, and his Calling is private; yet if he be choſen *Conſtable* of a Town, which hath ſufficient Perſons beſides to execute the Office, and no ſpecial Cuſtom concerning it, *perhaps* he may be relieved by the King's Bench. 2 *Hawk.* 63.

Yet perhaps the Court of King's Bench would relieve him.

By the 3*d Sect.* of the above Statute. *Any of the Fellowſhip of Phyſicians being admitted by the ſaid Preſident and Fellowſhip, may practiſe the Science of Phyſic, including Surgery.*

Sed quære.

Being by this *Sect.* empowered to practiſe Phyſic, either as *Phyſician*, *Apothecary*, or *Surgeon*, they may *perhaps* be thought to come within the Spirit of the

6 *Will.* III. c. 4. made perpetual by the 9 *G.* I. c. 8. which directs, *That all Perſons uſing the Art of an Apothecary within the City of* LONDON, *and ſeven Miles thereof, being free of the Society of Apothecaries of* LONDON, *and who ſhall be examined and approved, ſo long as they ſhall Uſe the ſaid Art, ſhall be exempted from the Offices of* CONSTABLE, SCAVENGER, OVERSEER OF THE POOR, *and all other* PARISH, WARD, *and* LEET *Offices, and from ſerving upon Juries; and if any ſuch Perſon ſhall be choſen into any of the ſaid Offices, or returned to ſerve on any Jury, ſuch Perſon producing a Teſtimonial under the Common Seal of the Corporation, of ſuch his Examination, Approbation, and Freedom, ſhall be diſcharged,* ſ. 3. and by ſ. 4. of the ſame Act, *All Perſons uſing the ſaid Art of an Apothecary within any other Parts of this* KINGDOM, WALES, *or* BERWICK, *and who ſhall be brought up and ſerve in the ſaid Art as an Apprentice* SEVEN YEARS, *ſhall likewiſe be exempted from the Offices and Duties aforeſaid, ſo long as they ſhall Uſe the ſaid Art.*

Apothecaries within London, or ſeven Miles thereof, exempted from *Pariſh*, &c. Offices, and ſerving on Juries;

and all Apothecaries within other Parts of the Kingdom, Wales, and Berwick, exempted.

By the 1 *W.* & *M. Stat.* 1. c. 18. *If any Perſon diſſenting from the Church of* ENGLAND, *ſhall be appointed to bear the Office of* HIGH-CONSTABLE, PETTY-CONSTABLE, CHURCHWARDEN, OVERSEER OF THE POOR, *or any other* PAROCHIAL *or* WARD-OFFICE, *and ſuch Perſon ſhall ſcruple to take upon him the ſaid Offices, in regard of the Oaths, or any other Thing, ſuch Perſon may execute ſuch Office by a* DEPUTY *that ſhall comply with the Laws, provided the* DEPUTY *be approved, as ſuch Officer ſhould have been:* ſect. 7. and by

A Diſſenter may appoint a Deputy to execute Offices.

Sect. 2. of the ſame Act, *Every Miniſter of a Congregation, that ſhall take the Oaths herein required, and make and ſubſcribe the Declaration, and ſubſcribe ſuch of the Articles as are required by this Act, ſhall be exempted from ſerving on any Jury, or from being choſen to the Office of* CHURCHWARDEN, OVERSEER OF THE POOR, *or any other* PAROCHIAL *or* WARD OFFICE, *or any other Office, in any Hundred, City, Town, &c.*

Miniſter of a Congregation exempted.

By the 10 & 11 *W.* III. c. 23. ſ. 2. *All and every Perſon and Perſons who ſhall apprehend any Perſon guilty of any the Felonies in this Act mentioned,* (viz. Burglary, Shop-lifting, and Horſe-ſtealing,) *and ſhall proſecute him, her, or them, ſo apprehended and taken, until he, ſhe, or they, ſhall be convicted of any the aforeſaid Felonies, ſuch Apprehenders and Takers, for his, her, or their Reward, upon every ſuch Conviction, without a Fee or Reward to be paid for the ſame, ſhall have forthwith, after every ſuch Conviction, a Certificate, which ſhall be under the Hand or Hands of the Judge, Juſtice, or Juſtices, before whom every ſuch Conviction ſhall be had, certifying ſuch Conviction, and alſo within what Pariſh or Place the Felony was committed, whereof any ſuch Perſon or Perſons was or were convicted as aforeſaid. And alſo, that ſuch Felon or Felons, was or were diſcovered and taken, or diſcovered or taken, by the Perſon or Perſons, ſo diſcovering or apprehending any the ſaid Felon or Felons. And in Caſe any Diſpute ſhall happen to ariſe between any of the Perſons ſo diſcovering or apprehending any the ſaid Felon or Felons, ſo convicted as aforeſaid, touching their Right or Title to the ſaid Certificate, that then the ſaid Judge, Juſtice, or Juſtices, or the major Part of them,*

Perſon having convicted a Felon, may have Certificate thereof, to exempt him from Pariſh Offices,

them, ſo reſpectively making ſuch Certificate as aforeſaid, ſhall in and by his or their Certificate direct and appoint the ſaid Certificate into ſo many Shares, to be divided amongſt the Perſons therein concerned, as to the ſaid Judge, &c. or the major Part of them ſhall ſeem juſt and reaſonable, which ſaid Certificate ſhall and may be ONCE *aſſigned over, and no more. And the original Proprietor of ſuch Certificate, or the Aſſignee of the ſame, whomſoever of them ſhall have the greateſt Intereſt therein, by virtue thereof, and of this Act, ſhall and may be diſcharged of, and from, all Manner of Pariſh and Ward Offices, within the Pariſh or Ward wherein ſuch Felony or Felonies ſhall be committed, and ſuch Party or Aſſignee is hereby declared to be diſcharged therefrom; which ſaid Certificate ſhall be enrolled by the Clerk of the Peace of the County, in which the ſame ſhall be granted, for which ſhall be paid unto ſuch Clerk of the Peace, One Shilling and no more.*

and may be once Aſſigned.

Sect. 3. Provided nevertheleſs, *that if any Perſon having ſuch Certificate, ſhall at any Time make Uſe of the ſaid Certificate to exempt him from any Pariſh or Ward Office, ſuch Perſon ſo making Uſe of the ſaid Certificate, or any other Perſon or Perſons, claiming any Intereſt therein, ſhall not aſſign over the ſaid Certificate to any Perſon or Perſons whatſoever.*

Not aſſignable after Uſe once made of it.

« IV. TO

"IV. TO BE NOMINATED YEARLY IN EASTER WEEK."

THE QUEEN *v.* SEARLE, *Trin.* 12 *Ann. B. R.* 1 *Seſſ. Caſes, pa.* 42. *Ed.* 1760. Nomination of Overſeers of the Poor of *Honniton*; the Juſtices having Authority to appoint fit Perſons and ſufficient Houſholders, it is not ſufficient to recite, that theſe Perſons are ſufficient Houſholders, *as appears by the Certificate of the Churchwardens*; but the *Juſtices* muſt *determine* that they are ſufficient Houſholders.

It is not ſufficient in an Appointment, to ſay that the Perſons appointed are ſubſtantial Houſholders; *as appears by the Certificate of the Churchwardens*; but the *Juſtices* muſt *determine* them to be ſuch.

Secondly, As to the Limitation of the Office, the 10th of *April* is the Time of Nomination, and they appoint for *the Year*, which is ill; for they muſt be appointed *at Eaſter*, or within a Month after; and *Eaſter* being moveable, they may be in *above* a Year, or *leſs*, and then there would be no Office.

Appointment of Overſeers for a Year held good; though *Eaſter* is moveable. Vide *K. v. Jones*, 2 Seſſ. Caſ. 328.

Sir *Peter King*. Theſe Orders are to be conſtrued as Orders of Regulation, and not Orders of Judgment, as Settlements, &c. and it is not uſual for this Court to meddle with Orders of Regulation, as for Rates, &c. The Words were, that upon Certificate of the Churchwardens of *Honniton*, that *A. B.* and *all of them*, Houſholders of *Honniton*, are fit to be *Overſeers of the Poor*.

The COURT *held*, that theſe Words, *all of them*, &c. were the Words of the *Juſtices*, and not of the *Churchwardens*; and the Appointment for *a Year*, according to the Act of Parliament, is good.

Ante. *K. v. Marlow.*

THE KING *v.* ST. GEORGE, *the Inhabitants of. Trin.* 9 *G. Forteſ.* 320. The Nomination of Overſeers of the Poor, was, that ſuch and ſuch *by Name*, were appointed *to ſet the Poor on Work*, &c. and mentioned the ſeveral Duties in the Act, but did not in *expreſs* Words appoint them OVERSEERS; and for that Reaſon this Nomination was quaſhed.

Overſeers of the Poor muſt be nominated in expreſs Terms.

THE KING *v.* CLERKENWELL. *Eaſt.* 13 *G. B. R. Foley* 4. The whole Court ſeemed to think the appointment of Overſeers of the Poor on a *Sunday*, to be a good Appointment, for it may be in *Eaſter* Week, and this is the firſt Day of the Week.

But the Appointment was quaſhed, becauſe it does not ſay they were ſubſtantial Houſholders.

May be appointed on a *Sunday*; *ſed quære*; *vide* K. v. Butler, and K. v. Bridgwater. Poſt.

THE KING *v.* HELLING. *Eaſt.* 6 *G.* III. *B. R.* 3 *Burr. Mansf.* 1904. On ſhewing Cauſe againſt quaſhing an *Order* made upon *Eaſter-Wedneſday*, 1766, by two Juſtices, appointing the Defendants Overſeers of the Poor of *St. Andrew's*, Holborn, above the Bars, and *St. George the Martyr*. It was obſerved, that

Order made on *Eaſter-Wedneſday*, 1766, appointing Overſeers for the *preſent Year*, 1766, is good.

It had been objected, that this is not an Appointment under the Statute of 43 *Eliz.* c. 2. being "*for this preſent Year*, 1766."

But this is the uſual Form in this Pariſh. And the Order ſays, "And to do *all* ſuch things as their "Duty requires;" that is (amongſt other things) to ſtay in their Office until others are appointed.

On the other ſide, it was admitted, that they could not go out of the Order; but by the 43 *Eliz.* c. 2. ſect. 1. the Overſeers are to be nominated *Yearly*, and this Act *giving a Juriſdiction*, they are obliged to conform *exactly* to it, conſequently they can nominate only *for a Year*, (neither more nor leſs,) whereas this Appointment being made on *Eaſter-Wedneſday*, and appointing them "*for the Year*, 1766," they were not authorized or intitled to continne any longer than the *End* of *that Year*. It is not an Appointment *for a Year*.

Lord MANSFIELD. The *real* Objections, I take it for granted, are not before the Court.

The only Queſtion *before us* is, "Whether the Order is good upon the *Face of it*, or not." Now this Order plainly means the *Overſeers' Year*; and *that* Year is from *Eaſter* to *Eaſter*. You would

Overſeers Year, is from *Eaſter* to *Eaſter*.

KING v. HELLING.

make it bad by underſtanding it to mean the *Year of our Lord*. But you cannot conſtrue this Order to be a bad one, by underſtanding it *ſo*: for it manifeſtly means *quite another ſort* of Year.

WILMOT, J.—Was ſilent, being a Pariſhioner.

YATES, J.—Was Abſent.

ASTON, J.—Concurred with *Lord Mansfield*, and ſaid, that if the Conſtruction may be taken two Ways, *one* of them making the Order *good*, the *other* making it *bad*, he ſhould take it in the Senſe that ſhould make it *good*.

By the *Court*. Rule diſcharged. Order affirmed.

THE KING *v.* BUTLER *and others*, *Hil.* 8 *G.* III. *K. B.* 1 *Blackſt. Rep.* 650. Motion, to quaſh an Appointment of the Defendants, to be *Overſeers* of the Poor of the Town of *Guilford*, made by two of the Corporation Juſtices on *Eaſter Monday*, 20 *April*, 1767. There being another Appointment made by W. S. the Mayor, and *T. P.* one of the County Juſtices, of two other Perſons on *Eaſter-Sunday*, 19 *April*, which was inſiſted on, to be the only valid Appointment; as being prior, in Point of Time, though alledged by the Defendants to have been made clandeſtinely, and fraudulently, at one o'Clock in the Morning. The Stat. 43 *Eliz.* was ſtrongly relied on, in favour of the Mayor's Appointment; which, in Sect. 8. enacts, that "Mayors, Bailiffs, or other Head Officers of every Town "Corporate, being Juſtices of the Peace, ſhall have the ſame Authority, within their reſpective "Juriſdictions, either in Seſſions, or out of it, as is given by the ſaid Act to any Juſtices of the Peace; "and no other Juſtice or Juſtices to enter or meddle there."

Mayor or Head Officer in Towns Corporate hath not the ſole Appointment of *Overſeers*.

This *Dunning*, Sol. Gen. argued, was to be *confined* to the Mayor, or other preſiding Officer *only*; and that he *alone* has the Power of appointing *Overſeers*; eſpecially, as by the ſame Sect. Aldermen of *London* are inveſted with the Power in their reſpective Wards. In Sect. 9. Accounts are to be made up before the ſaid Head Officer in the *ſingular Number*. By Sect. 10. In Caſe no Appointment of Overſeers be made in a Town Corporate, the Penalty of 5*l.* is laid upon the Mayor, Alderman, (*viz.* of *London*,) or Head Officer only; whereas, in Counties, it is laid upon every acting Juſtice of the Peace. And, in Sect. 11. the Warrant for recovering the Penalties is alſo grantable in the ſame Manner.

The Court will not quaſh an Appointment of *Overſeers* after their Year is expired.

But by Lord MANSFIELD, *Ch. Juſ. Cui bono* is this Application now made, to quaſh the Appointment, after the Year is expired? Upon this ground *alone*, the Rule muſt have been diſcharged. But I would not have it thought, that I put it off upon this Ground, becauſe I have any Doubt on the Queſtion. The Doctrine endeavoured to be ſet up is a very ſtrange one. What, ſhall a Mayor of a Town Corporate, (where there may be a dozen Pariſhes, where the right of voting for Members perhaps, may be by Scot and Lot; and he the returning Officer,) ſhall he *alone* appoint all the Overſeers in the Town? Had ſuch a Power been ever dreamt of before, it muſt have been conteſted over and over, and would long ſince have been corrected by Parliament. The Statute only means to give Juſtices in Corporation and Head Officers, where there are no Juſtices, the ſame Power as Juſtices in Counties; in Seſſions (where there are Juſtices) as well as out it. *Quod omnes Juſtic. conceſſerunt.* I queſtion whether there is any Determination, that an Appointment on a *Sunday* is good?

Vide ante 41.

ASTON, J.—I have a Note from Mr. *J. Bathurſt* of the Caſe of the *King and Clerkenwell*, *Eaſ.* 13 *Geo.* I. that an Appointment made on *Eaſter-Sunday*, ſhall be good; it being a Work of Charity. *Vide ante, determined on another Point, not ſaid to be ſubſtantial Houſholders.*

An Appointment of Overſeers on a Sunday bad.

Lord MANSFIELD. Notwithſtanding that Reaſon, I ſhould think an Appointment on a *Sunday*, is *prima facie*, clandeſtine and bad.

YATES, ASTON, WILLES, Juſtices, agreed, that the Rule be diſcharged.

Vide K. v. Bridgwater, Poſt.

THE

KING v. MERCHANT & another.

THE KING *v.* MERCHANT *and another, Juſtices of Bridgwater, Eaſ.* 9. *G.* III. *Bott.* 14. *Six* Appointments of Overſeers of the Poor, made by *two* Sets of Juſtices for *Bridgwater*, were removed into the Court of *King's-Bench*. It appeared that *two* had been made on *Eaſter-Sunday*, *two* on *Monday*, and *two* on *Tueſday*, the uſual Way of making Appointments in that Town; but which were *firſt* made, on the reſpective Days, did not appear. The Court ſeeing no Reaſon to preſume that thoſe made by the Defendants, were ſubſequent to thoſe made by the Juſtices, declared that, if their Appointment made on a *Sunday*, *bona fide*, was Prior to that made by the others on the ſame Day, it was good: Therefore an Affidavit of Priority was neceſſary to induce the Court to quaſh either.

An Appointment of Overſeers on a *Sunday* is bad.

THE KING *v.* BRIDGWATER, *Overſeers of, Tr.* 14. *G.* III. *B. R. Cowp.* 139. Upon ſhewing Cauſe, why ſeveral Appointments ſhould not be quaſhed, the Caſe appeared to be a Conteſt between two adverſe Sets of Borough Juſtices. Each Set met before Midnight of *Eaſter* Eve: and each began making their Appointments of Overſeers, the inſtant the Clock had ſtruck *twelve*; and ſo kept on renewing the ſame Appointment for an hour or two. But one Set of them made a freſh Appointment at eight o'Clock on the *Sunday* Morning; ſuppoſing that there would be a Conteſt concerning the Priority of thoſe Appointments, which were made ſoon after Midnight; and perhaps all of them bad.

Mr. *Hotchkin* ſhewed Cauſe, and cited 3 *Burr.* 1595. *Swan v. Broome* *, to have the Appointments good.

Lord MANSFIELD, *Ch. Juſt.* The Conduct of the Juſtices in this Caſe is a ſhameful Proſtitution and abuſe of their Office, for Election purpoſes; and I wiſh any body could be found who would proſecute both Parties. It would have been more for the Intereſt of either ſide, to have waited for a legal Appointment on the *Monday*. I do not know that there is any Authority, which ſays that an Appointment on a *Sunday* is good, but it certainly is not a day for ſuch Purpoſes as theſe; and therefore I will not give my Sanction to any of the Appointments. Let all the Appointments be ſet aſide, and a *Mandamus* be directed to the Juſtices to make a new Appointment; and let the Mayor give two Days Notice of the Time and Place of meeting for ſuch new Appointments.

The *three* other JUDGES concurred.

N. B. *The Matter was afterwards compromiſed between the Parties.*

* This was a Queſtion in the Court of *King's Bench*, upon a Writ of Error from the Court of *C. B.* upon a Recovery. Where it was held; that if the Return-Day of a Writ of Summons, be *on a Sunday*, and the Voucher dies on that Day, the Recovery is bad.

"OR WITHIN ONE MONTH AFTER EASTER;" *or*,

V. *Whether an Appointment of* OVERSEERS *at any Time* AFTER, *be good within the Statute.*

An Appointment of Overſeers of the Poor, by Juſtices of the Peace, though not made within a Month after *Eaſter* is good.

THE KING *v.* SPARROW *and others, Juſtices of Ipſwich, Hil.* 13. *G.* II. *B. R.* 2 *Strange*, 1123. A *Mandamus* iſſued, *teſted* 1ſt June, directed to the Juſtices of *Ipſwich*, to appoint *Overſeers of the Poor*; to which they returned, that they had in obedience to ſuch Writ made an *Appointment*: and that being removed by *Certiorari*, appeared to bear Date the 13th *June*.

It was objected by Mr. *Solicitor-General*, in Order to quaſh the *Mandamus* and Appointment, that it appeared, that the *Month after Eaſter* (which is the Time given by the Statute, to make the Appointment in) was expired before the Writ iſſued, *Eaſter* Day being the 22d of *April*; and the Court was bound to take Notice of that, according to *Salk.* 626*. and *Hoyle v. Lord Cornwallis. Trin.* 6. *G.* I.† The Act deſigned the Juſtices ſhould do it within a limited Time, and therefore puts it in *Eaſter* Week, or within one Month after *Eaſter*; now if it may be done at any Time, it will introduce a great Confuſion, and it will be many years before it comes round to the right Time again. There can be no Inconvenience in this, becauſe the *Churchwardens* are *Overſeers*, and take Care of the Poor; and there is no Penalty upon the Juſtices, which goes to their Uſe. This is a Part of the Act, which was never yet thought to be directory only.

* *Harvy* v. *Broad.*
† Strange, 387.

* As reported, 2 *Seſſ. Caſes*, 185.

"Mr. *Hollings*, on the other ſide*, argued, that the Appointment was not void, though not made "*within a Month after Eaſter*, becauſe that was only *directory* to the Juſtices, as Rates are directed to "be made *Monthly*, yet not void if otherwiſe; from the whole Tenor of the *Statute* it appears, "that it is intended that the Juſtices ſhould have Power over the Officers during the whole Year, and "and there are no negative Words that determine the Time of appointing Overſeers.

Poſt.
Vide K. v. *Skinn, and* K. v. *Baker.* Poſt.

"The Statute directs to what Age Children ſhall be bound, yet that was held to be only directory in "the Caſe of *Charlbury v. Aſcot*. As to Baſtards, it ſays by Juſtices reſiding in or near the Pariſh, yet "that is not neceſſary. The *King v. Morris*. (Maurice.) *Hil.* 8 *G.* II.

"Such a Conſtruction as they contend for is very inconvenient, for if an Appointment is made within "the Month, and afterwards quaſhed, or if the *Overſeer* dies after the Month, no new one could be "appointed."

* Who ſaid, My preſent Opinion is, that this is only directory; when a Time is limited in a Charter for making Elections, we never grant *Mandamus* to go to Election till that Time is expired, and if they cannot elect after, to what purpoſe is the *Writ* granted. 2 *Seſſ. Caſes*, 186.

The COURT upon the Argument (except Mr. Juſtice *Page**) inclined to think the *Mandamus* and *Appointment* were wrong; but upon further Conſideration, they all held the *Appointment* good, and confirmed that, and allowed the Return, the *Chief Juſtice* (Sir *William Lee*) delivering the following Reſolution:

The COURT muſt *judicially* take Notice, that this is made *without* the *Month*; but then the Queſtion is, whether it is void or not? The adding a Penalty is an Argument that it is not ſo; for it was foreſeen there would be Inconveniences if it was not done in Time, and it might therefore be proper to enforce a ſpeedy Execution of the Power; and this was the Conſtruction as to taking Pledges on *Weſtm.* 2*d.* c. 2.—2. *Roll. Abr.* 259. Though it is a new Law, yet againſt the Juſtice and Meaning of it, no negative ſhall be implied. *Magna Charta* ſays, *Communia Placita non ſequantur Curiam noſtram*; and yet if the Common Pleas gives Judgment to abate the Plaintiff's Writ, which is reverſed in the King's-Bench, that Court ſhall proceed upon the Writ, 2 *Inſt.* 23. So alſo as to an Aſſize in the proper

proper County, 2 *Inſt* 25. The Statute 2 *Edw.* VI. c. 4. requires *two* or *more* Juſtices; and yet 3 *Inſt.* 136. it is held, that where there is but *one* Juſtice he may execute the Authority.

KING v. SPARROW, &c.

The 43 *Eliz.* c. 2. being for the Maintenance of the Poor, muſt be conſtrued liberally; and ſo ſaid *Pratt*, Ch. J. *Trin.* 7. *G.* I. in the Caſe of the *K. v. Rufford*, where a *Mandamus* to appoint Overſeers, in an *Extra-Parochial* Place, was granted after the Month was expired; and ſo it was *Trin.* 5. *G.* II. in the Caſe of *Uttoxeter** ; and though there were Caſes on the 13 and 14 *Car.* II. c. 12. yet they muſt derive their Authority from the former Law. Here are no *negative* Words, as in 12 *Car.* II. c. 25. ſ. 13. *as to the Price of Wines*, where the Words "*and at no other Time*," are added.

Ante 8.

* Poſt.

It is alſo conſiderable, that this is a Thing which is not in the Power of the Pariſh to procure, and is therefore a Conſtruction *ex neceſſitate*.

"UNDER

" UNDER THE HAND AND SEAL OF TWO OR MORE JUSTICES;" *or,*

VI. *By whom, and how to be appointed.*

To be nominated and appointed by Juſtices of the Peace.

THE JUSTICES OF THE PEACE, *who have the appointing of* OVERSEERS, muſt be careful to chooſe ſuch Men as in every Town, are fitteſt, &c. *Dalt. Juſt.* 216. *Chap.* 73, ſ. 2.

And in the *King v. Chardſtock (ante* 30.) By PARKER, *Ch. Juſtice.* The *Nomination* is to be *by the Juſtices*, &c.

Seſſions have not an original Power to appoint Overſeers.

THE QEEEN *v. The Overſeers of* MALDEN REDBRESH. *Hil.* 10 *Ann. B. R.* VINER—*Tit.* SESSIONS OF THE PEACE, 347. An Order is made *at the Seſſions*, upon an *Appeal* againſt the *Appointment of Overſeers* of the Poor, which was diſcharged, and a *new* Appointment was made of *other* Perſons.

POWELL, *Juſtice.*—There muſt be two ſubſtantial Inhabitants appointed, and *if theſe are diſcharged* at the Seſſions, *it muſt go back again to appoint others*; but the Order was quaſhed for a Fault in the Caption.

And in THE KING *v.* GREAT MARLOW, *(ante* 31*)*. Two Juſtices appoint *A.* and *B. Overſeers.*—On *Appeal*, ſuggeſting that *C.* had a Majority of the Pariſhioners, the *Seſſions* appoint *B.* and *C. Overſeers.* It being objected, that Juſtices at *Seſſions* could make no *new* Appointment, the Court ordered it to be quaſhed.

THE KING *v.* FLAG *and* CHELMERTON, *Inhabitants of.—Mich.* 13 *Geo. B. R. Fol.* 7.—Mr. *Parker* moved to quaſh Orders for the Appointment of two Perſons to be *Overſeers of the Poor* of theſe two *Vills.* The firſt Order was made by *two Juſtices of the Peace*, to appoint two Perſons *Overſeers of the Poor* of theſe two *Vills*; they *appeal* to the *Seſſions*; the SESSIONS *appoint*, that theſe two *Vills*, ſhall chooſe *ſeveral Overſeers* for the future, and that they ſhall collect ſeverally in their *Vills*; and when they have collected, then to diſtribute thoſe Aſſeſſments jointly as before; and confirmed the Order of Juſtices.

The firſt Order of Juſtices was quaſhed, becauſe it was not mentioned, that theſe two were ſubſtantial Inhabitants or Houſholders.

Seſſions have no *original* Juriſdiction to appoint Overſeers.

The Order of Seſſions was *quaſhed*, becauſe the Seſſions had *no original Juriſdiction* to appoint *Overſeers.*

* Sect. 6.

And *Doctor* BURN obſerves,—that the Reaſon is, becauſe the Statute gives a Power of *appealing to the Seſſions* againſt the Order of Appointment *; which Power, by this Means, would be taken away.

Muſt be appointed under the Hands and Seals of two Juſtices.

THE KING *v.* ARNOLD, *Trin.* 4 *Geo. B. R. Str.* 101. At *Niſi prius* in *Middleſex*, before PRATT, *Ch. Juſtice. Indictment* againſt two Defendants, for that they being *Churchwardens*, and two others, *Overſeers*, in making a Poor's Rate, &c.

Parol Evidence of ſuch Appointment not to be taken.

The CHIEF JUSTICE held the Proſecutor, to ſhew an *Appointment of the Overſeers under the Hands and Seals of two Juſtices*; as the Statute requires, and he *rejected* parol Evidence, becauſe, he ſaid, it muſt be produced, that he might judge whether it was a ſufficient Appointment.

He

KING v. ARNOLD.

He quoted *Willoughby v. Dixey, C. B.* where a Will entered in the Spiritual Court Books to be delivered out to the Executor, was refuſed to be read, till Application and Refuſal of the Executor was proved. And the ſame in *Sir Edward Seymour's* Caſe as to a Deed.

Defendant acquitted.

Mayor or Head Officer in Towns corporate, hath not the ſole Appointment of *Overſeers*.

In the *King v. Butler, (ante* 42.), where there were two Sets of Appointments of Overſeers, one by two of the Corporation Juſtices of *Guilford*, and the other by the *Mayor* and one of the County Juſtices.—The 8th *Sect.* of the *Stat.* 43 *Eliz.* c. 2. was ſtrongly relied on; which enacts that, "Mayors, Bailiffs, or other head Officers of every Town corporate, being Juſtices of the Peace, ſhall "have the ſame Authority within their reſpective Juriſdictions, either in Seſſions, or out of it, as "is given by the ſaid Act to any Juſtices of the Peace; and no other Juſtice or Juſtices to meddle there."

This DUNNING, *Solicitor General*, argued, was to be *confined* to the Mayor, or other preſiding Officer *only*; and that he *alone* has the Power of appointing *Overſeers*, &c.

LORD MANSFIELD.—The Doctrine endeavoured to be ſet up is a very ſtrange one.—What, ſhall a Mayor of a Town Corporate, (where there may be a dozen Pariſhes, where the Right of voting for Members perhaps may be by Scot and Lot; and he the Returning Officer,) ſhall he *alone* appoint all the Overſeers in the Town? Had ſuch a Power been ever dreamt of before, it muſt have been conteſted over and over, and would long ſince have been corrected by Parliament. The Statute only means to give Juſtices in Corporations and Head Officers, where there are no Juſtices, the ſame Powers as Juſtices in Counties; in Seſſions (where there are Juſtices) as well as out of it.

N. B. In the *King v. Sparrow (ante* 54.) THE COURT ſaid, "The *Stat.* 2 *Edw.* VI. c. 4. requires *two* or more Juſtices; and yet 3. *Inſt.* 136. it is held, that where there is but *one Juſtice*, he may execute the Authority.—The 43 *Eliz.* c. 2. being for the *Maintenace of the Poor*, muſt be conſtrued *liberally*, and ſo ſaid PRATT, *Ch. J. &c.*

The Pariſhioners, as well as the Perſons appointed for *Overſeers*, may appeal to the Seſſions under the 43 *Eliz.* c. 2. againſt the Appointment.—Where an Act of Parliament empowers two Juſtices of the Peace to execute a *judicial* Act, they muſt meet and execute it together: therefore an Appointment of Overſeers under 43 *Eliz.* ſigned by two Juſtices *ſeparately*, is bad.

THE KING *v.* FORREST, *and others. Hil.* 29 *Geo.* III. *B. R.* III. *D.* and *E.* 38. An Appeal was made to the *Quarter Seſſions* of *Middleſex* by three Perſons, on Behalf of themſelves and others, *Pariſhioners* of *St. Pancras*, againſt a Warrant of Appointment made by *four* Juſtices, of *Thomas Forreſt*, *John Powell*, and one *Jones*, to be Overſeers of the Poor of the ſame Pariſh.—And a ſpecial Caſe was reſerved for the Opinion of the Court.

The Appellants exhibited their Petition and Appeal, ſetting forth, that the Pariſhioners of *St. Pancras* had always been accuſtomed to aſſemble in open Veſtry, on *Tueſday* in *Eaſter* Week, in Purſuance of Notice given, for the Purpoſe of returning proper Perſons to the Magiſtrates of the Diviſion, to be by them appointed to the Office of *Churchwardens*, *Overſeers*, and *Conſtables*. That there being three Diviſions with a ſeparate Overſeer for each, and two or more Perſons having always been nominated for each Diviſion, the Pariſhioners had always proceeded to make their Election by voting; and on a Return being made by the Veſtry Clerk of the Proceedings to the *Magiſtrates*, they had invariably appointed ſuch Perſons as had the Majority of Votes. That on *Tueſday* in laſt *Eaſter Week*, a Number of *Pariſhioners* attended, and *ſix* Perſons were put in Nomination for the Office of *Overſeer of the Poor*, for the Year enſuing: That there appeared for one *Hall*, 136; for *Young*, 118; for *Forreſt*, 94; and for *Powell*, 79 Votes; yet *Jacob Leroux*, Eſquire, an acting Magiſtrate in the Pariſh, who attended the Veſtry and voted, without waiting for the Return, ſigned a Warrant, appointing the ſaid *Forreſt* and *Powell*, together with one *Jones*, OVERSEERS for the enſuing Year; and then *ſent* ſuch Warrant to three other Juſtices, that they might ſign it; and who *ſeparately* ſigned the ſame at their reſpective Houſes.

That the Appointment ſo made in Favour of the Perſons in the Minority, being in direct Oppoſition to the uſual Cuſtom in the Pariſh, and without any Cauſe, inaſmuch as *Hall* and *Young* were in every reſpect eligible to the Office; and the Warrant being alſo illegally ſigned, the Petitioners conceive themſelves aggrieved.

On hearing the Appeal, it was objected by the Reſpondents, that no ſuch *Appeal* from *Pariſhioners* not included in the Appointment, *lay*; which Objection was over-ruled.

It

KING v. FORREST, &c.

It was admitted by the Reſpondents, that the *Warrant* was ſigned by *one* of the Juſtices, and then *ſent* by him, to the *three* other Juſtices, who *ſeparately* ſigned the ſame at their reſpective Houſes; and that no *two* of them had ſigned it in the *Preſence of each other*.

Whereupon the Court of Seſſions vacated the Order of the Juſtices.

A Rule having been obtained to ſhew Cauſe why the Order of Seſſions ſhould not be quaſhed.

ERSKINE and MARRYAT in Support of the Order of Seſſions, were ſtopped by the Court.

*For the Pariſhioners to *nominate* Overſeers, inſtead of the Juſtices, as directed by the 43 *Eliz.* c. 2. ſ. 1.

FIELDING and GARROW, *contra*, abandoned the Queſtion relative to the Uſage *, which was ſtated in the Caſe, becauſe it was in direct Oppoſition to the 43 *Eliz.* c. 2.—But made *two* Objections to the Order of Seſſions.

Firſt, That no Body but the Perſon who was *appointed* Overſeer could *appeal* under 43 *Eliz.* c. 2. otherwiſe *every Pariſhioner* might appeal, and even upon ſeparate Grounds; but it never could have been the Intention of the Legiſlature to open ſuch a Door to Litigation.

Secondly, The Appointment was good, notwithſtanding *all* the Magiſtrates did *not ſign it together*.

In the Caſe of an Order of Removal, where the Juſtices are to examine into the Facts, and make an *Adjudication* with reſpect to the Settlement of the Party to be removed, it is neceſſary that they ſhould

* Vide King v. Coln, St. Aldwin's, poſt.

act together, becauſe they form a *Court of Judicature*, and pronounce a *Judgment* *: But that is different from the preſent Caſe, where the ſigning the Appointment is a mere *miniſterial* Act. No Examination of Witneſſes takes Place; and they merely *approve* of the Nomination of *Overſeers*, as they do that of *Conſtable*; which may be done as well when they are acting ſeparately, as when they are together.

LORD KENYON, *Chief Juſtice*.—The Clauſe in the 43 *Eliz.* is conceived in the moſt *general* Terms. It enacts that, "if *any Perſon* ſhall find himſelf aggrieved, &c. *he may appeal*, &c." A Caſe may reaſonably be imagined to exiſt, in which the *Pariſhioners* would feel themſelves *aggrieved* by the Appointment of *Overſeers*, when we recollect the enormous Sums of Money which are received for the Relief of the Poor; as for Inſtance, if the Magiſtrates were to appoint Perſons who were *inſolvent*. As to the other Queſtion: Perhaps at this time of Day no great Inconvenience would follow, from permitting the Appointment to be made by a *ſingle* Magiſtrate. But we are to decide this Queſtion on the *Statute* 43 *Eliz.* c. 2.; the firſt *Section* of which expreſsly declares, that the Overſeers ſhall be nominated by two or more Juſtices of the Peace, *whereof one ſhall be of the Quorum*. Now theſe Words are very material in the Deciſion of a Queſtion ariſing upon this Statute.—For though in modern Times all the Juſtices in the Commiſſion *(except one)* are of the *Quorum*, yet at the Time when that Act paſſed, ſome Perſons were ſelected on account of their *ſuperior Knowledge*, and appointed to be of the *Quorum*. However, I do not wiſh to decide on that Sort of Argument: But it is admitted, that in the Caſe of *Orders of Removal*, they muſt act *together*; and for this Reaſon, "that "they ſhould aſſiſt each other, and that the Reſult of their Conference ſhould be the Ground of their "Determination." Now I cannot diſtinguiſh *this Caſe* from *that*.—This is not merely a *miniſterial* Act: If it were, like ſigning a Rate, that might perhaps vary the Queſtion: But it is a *judicial* Act, wherein the Juſtices are to exerciſe a Diſcretion; *and in order to make this a good Appointment, the Juſtices ſhould have acted together*.

Vide K. v. Weſt, poſt.

Cuſtom to elect Overſeers by *Pariſhioners*, not good, being in Oppoſition to the 43 *Eliz.*

With reſpect to the Uſage which is ſtated in the Caſe; no Queſtion can be entertained about it.—Becauſe, as the *Statute* 43. *Eliz.* commenced in the Time of legal Memory, no Uſage can prevail to oppoſe it.

ASHURST, *Juſtice*.—The Juſtices in appointing *Overſeers* do not act *miniſterially*; the *Statute* has veſted a *Diſcretion* in them, and they ſhould act *together*. And, it being a Matter of *Diſcretion*, they ſhould *confer together*, for the Purpoſe of a Communication on the Subject-Matter on which they are to determine: But this cannot be done when they are not together, and when no Conference can take Place. And, on the other Point, I agree with my Lord.

GROSE,

GROSE, *Juſtice.* — (*a*) The Uſage which has been attempted to be ſet up in this Caſe, is contrary to the *Statute*. Neither can any Doubt be entertained on the Queſtion relative to the Appeal. As to the other Point, I agree that the Juſtices ſhould be *together* when they ſign the Appointment. This is not a mere *miniſterial* Act; if it were, the Juſtices would have nothing more to do, than to *confirm* the Appointment preſented to them by the *Pariſhioners*; but they are to exerciſe a *Diſcretion* upon the Subject. And the general Rule is, that when an Act of Parliament requires the Concurrence of *two* Magiſtrates, they ſhould *both act together*. This Point has been determined, not only in the Caſe of Orders of Removal, but in Orders of Baſtardy alſo, in *Billings v. Prim and another*, in the Court of Common Pleas.—(*Poſt Title* BASTARDS.)

(*a*) BULLER, *Juſtice*, ſat this Day for the Chancellor.

General Rule is, that when an Act of Parliament requires the Concurrence of *two* Magiſtrates, they ſhould *both act together*.

Rule diſcharged.

Order of Seſſions, quaſhing the Appointment, confirmed.

VII. "WHEREOF ONE TO BE OF THE QUORUM."

2 *Salk.* 473. 4. 5 *Mod.* 322.

Many Orders, &c. were formerly quaſhed, becauſe it was not ſet forth therein, that *one* of the Juſtices was of the *Quorum*.

And notwithſtanding the *Statute* 13 & 14 *Car.* II. c. 12. ſ. 2. which required "*the Juſtices, on "Appeal to them at their Quarter-Seſſions, by Perſons aggrieved by any Judgment of two Juſtices, to "do them Juſtice, according to the* MERITS *of their Cauſe.*" And,

The 5 *Geo.* II. c. 19. ſtiled, "An Act to *oblige* the Juſtices of the Peace at their General-"Quarter Seſſions, to determine Appeals made to them, *according to the Merits of the Caſe*, not-"withſtanding *Defects of Form* in the original Proceedings."

Theſe Words *(one of us being of the Quorum)* were conſidered ſo much of the *Eſſence* of the Order, &c. and *Matter of Subſtance*. As P. HOLT, *Chief Juſtice*. "For this being a *ſpecial* Authority, it "*muſt appear* to be purſued.—2. *Salk.* 474." as to require another Remedy for the Omiſſion of them: And therefore was paſſed.

The 26 *Geo.* II. c. 27. entitled, "An Act to confirm certain Acts and Orders made by Juſtices of "the Peace, being of the *Quorum*, notwithſtanding any Defect in not expreſſing therein, that ſuch "Juſtices of the Peace are of the *Quorum*."

Preamble.

WHEREAS *Authority is given by divers Acts of Parliament, to two or more Juſtices of the Peace, whereof one or more are to be of the* QUORUM: *And whereas divers Acts, Orders, Adjudications, Warrants, Confirmations of Indentures, and other Inſtruments, done, made, and executed, by two or more Juſtices of the Peace, without expreſſing that they are, or that one of them is of the* QUORUM, *have been, and may be, for that Reaſon* ONLY *impeached, ſet aſide, and vacated: Be it enacted, &c. That from and after the 24th of June, 1753, no Act, Order, Adjudication, Warrant, Indenture of Apprenticeſhip, or other Inſtrument, already made, done, or executed, or hereafter to be made, done, or executed, by two or more Juſtices of the Peace, which doth not expreſs that one or more of the Juſtices, is, or are, of the Quorum, ſhall be impeached, ſet aſide, or vacated, for that Defect* ONLY, *any Law, Statute, or Uſage, to the contrary notwithſtanding.*

No Act, Order, &c. of two or more Juſtices, to be vacated for Defect only, in not expreſſing that one or more of ſuch Juſtices are of the *Quorum*.

The Neceſſity that *one* of the Juſtices making ſuch Orders, &c. ſhall ſtill, *in fact*, be of the *Quorum*, I conceive is not taken away by this Statute; though chiefly, if not altogether, done away by other Means, viz. by inſerting all the Juſtices in the Commiſſion (except one) in the *Quorum* Clauſe; which in modern Times hath been univerſally done, it probably not being found as neceſſary to ſelect *ſome* Perſons on account of their *ſuperior Knowledge*, to be of the *Quorum*, as it might have been at the Time the Act of the 43d of *Eliz.* was paſſed.

3 *Burn.* Vide *K. v. Forreſt & another.*

Therefore, the only Juſtices of the Peace concerning whoſe Power to make ſuch Orders, &c. a *Queſtion* could have ariſen under that Part of the Statute of the 43 *Eliz.* were thoſe of Corporate Towns, whoſe Charters might contain no *Quorum* Clauſe, or where there was but one Juſtice of the *Quorum*.

And notwithſtanding the 8th *Section* of that *Statute, (which vide next Chapter,)* whereby is given to *Officers of Corporate Towns*, and *Aldermen of London*, the ſame Authority, *within their Limits*, as Juſtices of the Peace of the County, without *ſaying* that One of them ſhould be *of the Quorum.*

ALBRIGHTON *v.* SKIPTON. *Eaſ.* 6 *G. B. R. Str.* 300. Upon an Appeal from an Order of two Juſtices *(one of the Quorum)* the Seſſions, reciting that they had peruſed the Charter of *Albrighton*, and it not appearing *thereby*, that the two Juſtices were either of them of the *Quorum*, therefore they quaſhed the Order.

ALBRIGHTON v. SKIPTON.

By the COURT. The Order of Seſſions muſt be quaſhed; not for want of any Power in the Seſſions, to look into the Juriſdiction of the Juſtices, for that they certainly have; but becauſe that want of Juriſdiction, is not ſufficiently alledged, ſince they might have a Juriſdiction, though it did not appear upon the Charter of *Albrighton*. The Seſſions ſhould have ſaid in general, that it appeared to them, that the two Juſtices were neither of them of the *Quorum*, and that would have been good Cauſe to quaſh the Order of the two Juſtices. But now this is in Part remedied by

The 7 G. III. c. 21. *which is* intitled, "An Act to obviate Inconveniences which may ariſe "with reſpect to the Execution of ſeveral Acts of Parliament, in ſuch Cities, Boroughs, Towns Cor- "porate, Franchiſes, and Liberties, as have only *one* Juſtice of the Peace of the *Quorum*, qualified to "Act within the ſame;" reciting,

WHEREAS *Authority is given by divers Acts of Parliament, to two or more Juſtices of the Peace, whereof one or more are to be of the Quorum: And, whereas many Inconveniences have ariſen in ſuch Cities, Boroughs, Towns Corporate, Franchiſes, and Liberties, as have only* ONE *Juſtice of the Peace of the* QUORUM, *qualified to act within the ſame: Be it enacted, &c. That from and after the paſſing of this preſent Act, all Acts, Orders, Adjudications, Warrants, Indentures of Apprenticeſhip, or other Inſtruments, which ſhall be made, done, or executed, by Virtue of any Act or Acts of Parliament, made or to be made, by two or more Juſtices of the Peace, qualified to Act within ſuch Cities, Boroughs, Towns Corporate, Franchiſes, and Liberties, though neither of the ſaid Juſtices are of the* QUORUM; *ſhall be valid and effectual in Law, to all Intents and Purpoſes, as if* ONE *of the ſaid Juſtices had been of the* QUORUM; *any Law, Statute, or Uſage, to the contrary notwithſtanding.*

Two or more Juſtices, though not of the *Quorum*, impowered to carry certain Acts into Execution, within Cities, Boroughs, &c.

"IN OR NEAR THE SAME PARISH OR DIVISION;" *or,*

VIII. *What Juſtices are to be ſo conſidered, within the* 43*d Eliz. and, Whether an Appointment of* OVERSEERS *ſhall be good without theſe Words.*

Officers of Corporate Towns have *within their Limits*, the Authority of Juſtices of the Peace of the County,

and Aldermen of London.

By the *Statute* 43 *Eliz.* c. 2. ſ. 8. it is enacted, *That the Mayors, Bailiffs, or other Head Officers, of every Town and Place Corporate, and City, within this Realm, being Juſtice, or Juſtices of the Peace, ſhall have the ſame Authority, by virtue of this Act, within the Limits and Precincts of their Juriſdictions, as well out of the Seſſions, as at their Seſſions, if they hold any, as is herein limited, preſcribed, and appointed to Juſtices of the Peace of the County, or any two or more of them, or to the Juſtices of the Peace in their Quarter Seſſions, to do and execute for all the Uſes and Purpoſes in this Act preſcribed, and no other Juſtice or Juſtices of Peace, to enter or meddle there: And that every Alderman of the City of London,* WITHIN HIS WARD, *ſhall and may do and execute, in every reſpect, ſo much as is appointed and allowed by this Act, to be done and executed by one or two Juſtices of Peace of any County within this Realm.*

A Pariſh extending itſelf into two Counties, or into two Liberties.

And by the 9th *Sect.* of the ſame *Statute*, it is alſo enacted, *That if it ſhall happen, any Pariſh to extend itſelf into more Counties than one, or Part to lie within the Liberties of any City, Town, or Place Corporate, and Part without, that then, as well the Juſtices of Peace of every County, as alſo the Head-Officers of ſuch City, Town, or Place Corporate, ſhall deal and intermeddle only, in ſo much of the ſaid Pariſh as lieth within their Liberties, and not any further: And every of them reſpectively, within their ſeveral Limits, Wards, and Juriſdictions, to execute the Ordinances beforementioned,* CONCERNING THE NOMINATION OF OVERSEERS, *the conſent to binding Apprentices, the giving Warrant to levy Taxations unpaid, the taking Account of Churchwardens and Overſeers, and the committing to Priſon, ſuch as refuſe to account, or to pay the Arrearages due upon their Accounts: And yet, nevertheleſs, the ſaid Churchwardens and Overſeers, or the moſt part of them, of the ſaid Pariſhes that do extend into ſuch ſeveral Limits and Juriſdictions, ſhall, without dividing themſelves, duly execute their Office, in all Places, within the ſaid Pariſh, in all Things to them belonging, and ſhall duly exhibit and make one Account, before the ſaid Head Officer of the Town, or Place Corporate, and one other before the ſaid Juſtices of Peace, or any ſuch two of them as is aforeſaid.*

Though theſe *Sections* do not *ſtrictly* come within the meaning of this HEAD; yet, as creating or giving Power to Magiſtrates within *limited Juriſdictions* or *Diviſions*; they are not wholly inapplicable, nor will they, I truſt, be thought *altogether* improperly placed here.

It is now well known, that *any* Juſtice of the Peace of a County, is a Juſtice *in or near the Pariſh or Diviſion*, for the Purpoſes in the Act; unleſs perhaps ſubject to the Conſtruction put upon the Expreſſions in *Aſhley's* Caſe, (*Poſt* 53.) viz. *the next Juſtice:* and which ſeems reaſonable, and adopted by Lord *Mansfield*, in the *K. v. Loxdale*; it having been frequently determined, that theſe Words are only directory, and mere Words of Relation; as in an

Ante 26.

Anonymous Caſe, M. 8. *W.* III. *B. R.* 2 *Salk.* 473. Exceptions were taken to an Order of Removal, That it did not appear by the Order, that the Juſtices *were of the Diviſion*, or that either of them were of the *Quorum*.

The laſt was held a good Exception*, but the firſt was over-ruled, for in *that* the Statute is only directory.

* *Sed vide* 26 *G.* II. c. 27. *ante* 50.

In

In *Eliz. Aſhley's Caſe, Trin.* 9 *W.* III. *B. R.* 2 *Salk.* 480. Exception was taken to an Act of two Juſtices, becauſe it was not ſaid, that the two Juſtices *were of the Diviſion*, BUT NOT ALLOWED: *For the* COURT held the Statute as to this, to be only *directory*, and not *reſtrictive*, or *qualificatory*, as that of the *Quorum*. And in the Report of this ſame Caſe, in 12 *Mod.* 138, the COURT ſaid, This is but *directory*; for there may be *no* Juſtices of the *Diviſion*. *Diviſion* is not known in our Law, but of the *Counties* into *Hundreds*; and by *that* Expreſſion, in that Statute, is meant to go to *the next Juſtice*, *(Vide K. v. Loxdale.)* And in 12 *Mod.* 546. By HOLT, Ch. J. Where an Act of Parliament ſays, Juſtices of Peace of ſuch *a Diviſion* ſhall do ſo and ſo, it is only *directory* QUOAD the *Diviſion*, and any of the Juſtices *of the County* may do it. And in the

King v. Sparrow, as reported in 2 *Seſſ. Caſes*, 140. on an Appointment of Overſeers, LORD CHIEF JUSTICE ſaid, "It has been held, that the Juſtices being of *the Diviſion*, *(as the Statute mentions,)* is only directory;" and in another Part of the ſame Caſe, he ſays, "Among the Rules laid down, 3 *Co.* 7. "*for conſtruing Statutes*, ONE IS, that the Judges ought to give force to Remedies given by a Statute."

In the *King v. Loxdale*, *(ante* 26.*)* as to an Appointment of Overſeers, LORD MANSFIELD ſaid, As to the other Clauſe, to be nominated by the Juſtices *in or near*, &c. this is a *looſe*, *indefinite* Expreſſion. If a Juſtice lives *twenty Miles* off, *if there is none nearer*, he muſt be ſaid to be *near*. It is a word of Relation. I do not ſee how this Clauſe could be conſtrued otherwiſe.

The Words "*in, near,*" &c. in 43 *Eliz.* are merely *relative*, and the Power thereby given may be executed by any Juſtice of the County, *if there is none nearer.*

Doctor Burn ſays, In ſome of the ancient Statutes, not now in Force, as particularly by the 22 *H.* VIII. c. 12. the Juſtices were deſired to *divide* themſelves, for the better Execution of the Regulations reſpecting the Poor. And thence came the Clauſe in the ſubſequent Statutes, that the Juſtices *of the Diviſion* were to do ſuch and ſuch Things. But as there is no Law at preſent, which requires them to *divide* for the aforeſaid Purpoſes, there is properly no *Diviſion* in the Senſe which the Statutes intended; and conſequently it cannot be neceſſary to *ſet forth* now, that the Juſtices are *in or near the Diviſion*.

Though as *Doctor Burn* has above obſerved, and *all* the Determinations on this Subject fortify his Opinion, that there are no ſuch *Diviſions*, and that it is not neceſſary to *ſet forth* that the Juſtices are *in or near the Diviſion*; yet it certainly is prudent, for many obvious Reaſons, ſo far to conſider the Act of Parliament *reſtrictive*, as to get Appointments or Orders made by the *next* Juſtices; and which from the foregoing *dicta* of *Lord Holt* and *Lord Mansfield*, ſhould ſeem *neceſſary*.

Now

Now come we more particularly to conſider the aforementioned Statute of the 13 & 14 *Car.* II. c. 12. ſec. 21. which recites, "*That the Inhabitants of the Counties of* LANCASHIRE, CHESHIRE, DERBYSHIRE, YORKSHIRE, NORTHUMBERLAND, *the* BISHOPRICK *of* DURHAM, CUMBERLAND, *and* WESTMORLAND,

" AND MANY OTHER COUNTIES IN ENGLAND AND WALES; *or,*

IX. *Whether other Counties than thoſe named in the Statute, ſhall be taken to be within the general Words.*

Warwick, not being any of the Counties named in this Statute, *quære*, whether within the Statute.

SKELLINGTON *v.* NORTON. *Trin.* 27. *Car.* II. 2 *Lev.* 142. In Treſpaſs, a ſpecial Verdict found this Statute, and that the *Pariſh* of *Kenilworth*, in the County of *Warwick* (*not* being any of the *Counties* named in this Statute) is a large Pariſh, having two Townſhips; but it is not found that it is ſo large, that *parochial* Diſtribution cannot be made; and the Queſtion was, if the County of *Warwick*, not being named in the *Statute*, ſhall be taken within the general Words (*and divers other Counties*). And *Hopkins*, Serjeant, cited a Caſe to have been adjudged in *C. B.* that the Statute *did not extend to other Counties than thoſe which are expreſsly named*; and to this, HALE, *Ch. J.* inclined, but the Court would ſee the Precedent before they would give Judgment; by which

Hale inclined that *no other Counties* than thoſe named were.

They adjourned.

and in *Mich. Term* ſo ruled. *Sed Vide* ſame Caſe.

BUT afterwards, in *Mich. Term*, it was adjudged, that the Statute did not extend to any other Counties, but only thoſe that are named therein. *Ibid.*

In *Freeman's Reports*, 401. the ſame Caſe is reported thus. HALE, *Chief Juſtice*, ſaid—By the Words it ſeems to be intended for *all* Counties in *England*, becauſe the Words are (*or other Counties.*) But *Serjeant* HOPKINS cited the Judgment in *C. B.* in the Caſe of *Wilſon* and *Bonner*, between *Chipping-Campden*, and *Broad-Campden* *, in Glouceſterſhire, where the Judges held, that this Act extended to no Counties but thoſe named. *Ibid.* 412, it is ſaid,

* *This Caſe does not appear any where reported.*

It is ſaid, that, for *another* Reaſon the Court gave Judgment, and did *not* rule that *no other* Counties were within the Act. Though *Hale* ſtrongly inclined to think, that no other Counties were: *ſed vide* next Caſe.

That, in *Mich. Term* afterwards, The COURT gave Judgment for the Defendant; *becauſe*, though it was found to be a large Pariſh, yet it was not found (to be ſo big, that by Reaſon of the Largeneſs thereof, they could not reap the Benefit of the Act of the 43 *Eliz.*) according to the Words of the Statute; and for *that Reaſon*, the *Court gave Judgment*; and ſo did *not* poſitively rule, that *no other Counties were within the Act, but thoſe named:* But HALE did *now* ſtrongly incline, that no other Counties were within the Act, and ſaid the Inconveniencies would be very great; for by that means the poor *Boroughs* would be charged with *Poor*, and the *Vills*, where Men of good Eſtates lived, but perhaps *no poor*, would be at no Charge at all.

DOLTING *alias* DOULTING *v.* STOKE-LANE, *alias* STOCKLAND. *Hil.* 11 *Ann. B. R. Fol.* 98. and *Forteſc.* 219. The Caſe was—A Perſon was born at *Dolting*, and by an Order of two Juſtices he was ſent to *Stockland*, as the Place of his laſt legal Settlement, having been hired, and ſerving there for one whole Year; they appeal to the Seſſions, and inſiſt that he ought to be ſent to *Brokeham-Lodge*,

Lodge, which was an *Extra-Parochial Place*, becauſe he had lived there as a Covenant-Servant for many Years laſt paſt, and had had ſeveral Children there; the Seſſions upon this quaſh the firſt Order, and he was ſent to *Brokeham-Lodge*.

DOLTING v. STOKELANE.

Chief Juſtice PARKER giving the Reſolution of the Court.—

The Difficulty ariſes on the 13 & 14 *Car.* II. *Chap.* 12. ſ. 21, 22.

Statute 13 & 14 *Car.* II. *Ch.* 12. extends to all the Counties in England and Wales, viz. as to appointing Overſeers of the Poor in *Townſhips*, &c. where Pariſhes are too large.

Firſt Queſtion is, Whether this Act be *general*, and *extends to all the Counties of England?*

I think it is a Miſtake to ſay, that that Clauſe extends to *no other Counties* than thoſe named, becauſe the Words are expreſs; for beſides the *Counties* there particularly named, it goes on and ſays, *and many other Counties in England and Wales*; ſo *that Wales* muſt be excluded, if it be to be confined to the *Counties named*; ſo it muſt *extend to all Counties*.

Extra-Parochial Places (*if reputed Towns or Vills*) are within the meaning of it.

Second Queſtion is, If it be general, then, whether it be confined to *Towns* and *Villages*, or may extend to all *Extra-Parochial Places*, that are not ſo?

It is recited indeed, "*that by Reaſon of the Largeneſs of the Pariſhes in thoſe Counties named, and others, the Benefit of the* 43 *Eliz. could not be had:*" But it does not ſay, that thoſe *Towns* and *Villages* muſt be within *Pariſhes*; but that the Poor within every *Townſhip* or *Village*, within the *Counties* aforeſaid, ſhall be provided for, within the *Townſhip* and *Village* wherein he inhabits, or wherein he was laſt lawfully ſettled; which ſhews it extends to all *Towns* and *Villages* in *any County* if they can't reap the Benefit of 43 *Eliz.* Therefore *Extra-Parochial Places*, though, perhaps, *not within the direct View of the Legiſlators*, yet are within the *expreſs* Words; *the Poor in every Town and Village.* And the Juſtices may in *Towns* and *Villages* execute all the Power in *Towns* and *Villages*—as they have within any *Pariſh* or *Pariſhes*, by 43 *Eliz.*; the Conſequence of which is, that they may be ſettled in theſe Places, and may be removed from them; and though there were no Officers before, yet by this Clauſe, the Juſtices may appoint ſtanding *Overſeers*, in theſe Places, to take Care of the Poor.

Settlements may be gained in *Extra-Parochial Places*, and *Overſeers* appointed, if none there before to take Care of the Poor.

However, this Order of Seſſions is naught, becauſe this is not within a *Town* or *Village*, and therefore, though *Extra-Parochial* TOWNS and VILLS are within this Law, yet not *other Places*, which are neither *Town* nor *Vill.* If it were ſaid at *Brewcomb's Lodge* generally, and no more, that might be *intended* a *Vill*; but this is ſaid to be a certain *Extra-Parochial Place*, called *Brewcomb's Lodge*; ſo that this may be but one Houſe; for it muſt conſiſt of ſeveral Houſes and Inhabitants; ſo that it not appearing to be any more than one ſingle Houſe, it is not within the Act of Parliament, and ſo the Order ought to be quaſhed.

But not if they be not *Towns* or *Vills*.

The laſt legal Settlement muſt be expounded, ſuch Settlement as can be by this Act, &c. it is of Conſequence, whether he can be ſent back to this *Extra-Parochial Place*; ſuppoſe one go and live as a Servant in an *Extra-Parochial Place*, being neither *Town* nor *Village*, would this diſcharge him of all other Settlements? As he ſhall not ſtay where he is *not* ſettled, ſo he muſt go where he is *laſt legally* ſettled, *where he could be ſent*; laſt is laſt in Law, and an *Extra-Parochial Place*, is the ſame, as if it were in *Ireland*.

In ſuch Caſe a Man muſt be ſent to his *laſt legal* Settlement.

Vide Titles, *Settlement by* SERVICE, REMOVAL. *Poſt.*

The ſame Caſe in *Foley*.—Now if it was to extend only to thoſe *Counties* that were named in the Act, it would not extend to one County in *Wales*, for none of the Counties named are in *Wales*; ſo that the Clauſe muſt be taken generally. Now, if this is a *general Clauſe*, the next Thing to be conſidered is, Whether this does extend to *Extra-Parochial Places*, or only to *Townſhips* and *Vills* within *Pariſhes*; but what was the Reaſon of that? It was becauſe the *Pariſhes* were ſo large, as thoſe *Vills* and *Townſhips* could have no Benefit of the Act of 43 *Eliz. Chap.* 2. without this further Proviſion had been made by this Act of 13 & 14 *Car.* II. c. 12. So *Extra-Parochial Places*, though not being within the *Purview* of the Act of Parliament, yet being within the ſame *Miſchief*, we are all of Opinion, that it ought to extend to *Extra-Parochial Places:* Then, if there can be *no Settlement*, there may be *no Removal.* But ſuppoſe there be no Officers in thoſe *Extra-Parochial Places*, in ſuch Caſes the Perſons who are aggrieved ought to complain to the Juſtices, and they ought to appoint Officers

Same Caſe as reported in *Foley*. Vide Mr. *Fazakerly's* Argument in the K. *v. Uttoxeter*, *poſt.*

cers, and the Juſtices ought to appoint *Overſeers of the Poor*, as they do in other Places, purſuant to to the Act of 43 *Eliz.** But although *Extra-Parochial Places* are within the Act, yet we think this Order ought to be quaſhed, becauſe they have not brought themſelves within the Act; for it does not appear by the Order, whether this *Extra-Parochial Place* was a *Townſhip* or *Vill*, or what it was; and the Act only extends to ſuch *Extra-Parochial Places*. It is ſaid here, that he ſerved as a Covenant-Servant for ſeveral Years, at a *certain Place*, called *Brokeham-Lodge*, which is only *one Houſe*, and *that* this Clauſe does not extend to; but ſuppoſing he cannot gain any legal Settlement in this Place, yet whether his living there for ſeveral Years, he cannot after that go to what Place he pleaſes; and we think he cannot, for the Law takes Notice only of his *laſt legal* Settlement; and it is like this Caſe; ſuppoſe a Perſon would come into a Pariſh, not renting *ten Pounds a Year*, they refuſe him; then he applies to the Place where he was laſt legally ſettled to give him a Certificate, they refuſe ſo to do; then he goes into an *Extra-Parochial Place*, and lives ſome Years there; do you think this ſufficient Reaſon for the Perſon to come and live where he pleaſes afterwards? No, ſure, there is no Reaſon in that, for the Law takes Notice of his laſt legal Settlement; and thither he ought to be ſent, if likely to become chargeable, ſo that we think he cannot be ſent to *Dolting*, which was the Place of his Birth, but ought to be ſent to *Stokeland*, as having gained a Settlement by being hired, and ſerving for a Year there; ſo we are all of Opinion that the Order of Seſſions, which quaſhed the Order of Juſtices, muſt be quaſhed.

*K. *v.* Rufford, *ante* 8.
K. *v.* Denham, *ante* 9.
K. *v.* Belvoir, *ibid.* 9.
K. *v.* Showler, *ante* 12.
K. *v.* Tamworth, *ante* 13.
K. *v.* Bedford *Juſtices*, *ante* 14.
K. *v.* Peterboro' *ante* 16.
K. *v.* Eyford, 19.
K. *v.* Ronton-Abbey, *ante* 21.

Hinam Vin.

CLIFTON *v.* CHURCHAM, *Hil.* 12 *G.* II. *Andrews*, 314. An Order was made by two *Juſtices* for the removal of a *Pauper* and his Children, from *Clifton* to the *Pariſh* of *Churcham*; which Order, upon Appeal, was quaſhed: And the Order of Seſſions ſet out, that the Party was laſt legally ſettled in the *Hamlet* of *Hindham*, within the ſaid *Pariſh* of *Churcham*, and that the ſaid Hamlet hath diſtinct Officers of its own, and provides for its own Poor.

And it was moved by Mr. *Taylor*, to quaſh this Seſſions Order, becauſe by 43 *Eliz.* c. 2. a *Townſhip* or *Hamlet* cannot provide for their Poor, or have proper Officers appointed: And the Statute of 12 & 13 *Car.* II. c. 12. ſ. 21. which impowers *Townſhips*, in large *Pariſhes*, to provide for their own Poor, extends only to the Counties therein mentioned, 2 *Lev.* 142. *S. C.* 3 *Keb.* 422. 460. 494. 539.

Act 13 & 14 *Car.* II. c. 12. extends to *all* Counties.

But BY THE COURT, the Act of *Car.* II. extends to *all Counties*, it being equally beneficial to *all*; and the Counties there ſpecified are mentioned only as Inſtances. And ſo LEE, *Ch. J.* ſaid it was determined, upon great Debate and Conſideration, in the Caſe of *Dolting* and *Stoke-lane*, which Caſe hath been ever ſince adhered to.

And he denied the Caſes cited, to be Law: and ſaid, that a *Pauper* may be ſent to an *Extra-Parochial* Place, for which Officers are appointed.

The Motion was therefore denied.

It now appearing that this Act is general, and held to extend to *all Counties* in *England, Wales*, &c. and to *Towns, Villages*, and even *Extra-Parochial Places, having the Reputation of Vills* the next Part of it to be examined is,

" BY REASON OF THE LARGENESS OF THE PARISHES, CANNOT REAP THE BENEFIT OF THE 43d *of Eliz*;" *or*,

X. *What Deſcription of Pariſhes have been adjudged ſuch, within the Meaning of the* 13 & 14 *Car.* II. c. 12.

THE KING *v.* UTTOXETER, *Inhabitants of. Eaſ.* 6 *G.* II. 1 *Seſſ. Caſes*, 163. Mr. Serjeant *Birch* took Exceptions to the Order of Seſſions, made at *Stafford*, that *three Vills* ſhould pay the Poor within thoſe *Vills*, and that *Uttoxeter (the Pariſh in which thoſe Vills are)* ſhould pay its own Poor, within the Pariſh, *excluſive* of thoſe *Vills*.

Exceptions taken to Order of Seſſions, that *three Vills* in the Pariſh of *Uttoxeter*, ſhould maintain their own Poor, diſtinctly from the reſt of the Pariſhes under the 13 & 14 *Car.* II. c. 12.

Firſt Exception, That *Stafford* is not a County within the Meaning of 13 & 14 *Car.* II. c. 12. which extends only to the northern Counties, and cited 2 *Lev.* 142. *(Skillington v. Norton, ante* 54.) 3 *Keb.* 422. 529.

Second Exception, That the Order is *too general*, for it ought to ſay, *that this Pariſh is ſo large that it it cannot come within the Benefit of the* 43*d Eliz.*

Third Exception, That the Appeal of the *three Vills* is joint, which ought to have been ſeparate, and the *Vills* in this Reſpect to be conſidered *as Pariſhes*.

Fourth Exception, That the Order that theſe *Vills* ſhould maintain their own Poor, is alſo wrong, being joint, for *by the Statute*, every *Vill* muſt maintain their own Poor; and, cited *Salk.* 480. where it is held, that the Seſſions cannot annex one Pariſh to another.

Mr. *Wyrly*. This being an Appeal from a Rate, the Seſſions had no Power to conſider any thing elſe, and could not bring this Matter in Queſtion, for the Equality or Inequality of the Rate was before them, and they could not ſettle the Bounds of thoſe *Vills*.

To which it was replied, that it was determined in *Dolting* and *Stoke-land*, that the Statute 13 & 14 *Car.* II. c. 12. extends to all Counties. Ante 54.

Mr. *Reeve* ſaid, by 43 *Eliz.* c. 2. Juſtices have a Juriſdiction on Appeal for Poor's Rate, and here the Appeal is by the Inhabitants of the *three Vills*, and the Seſſions quaſh the Rate as to theſe *three Vills*; as to that ordering Part, that they ſhould maintain their own Poor *ſeparately* from *Uttoxeter*, it was a Matter not before them, for only the *three Vills* appealed.

As to *Stillington* and *Norton*, that has been determined otherwiſe ſince in *Dolting* and *Stoke-land*, where it was reſolved, that 13 & 14 *Car.* II. c. 12. would extend to *other Counties* than *thoſe named in the Statute*; as to *Brokeham-Lodge*, it did not appear that there was more than one Houſe, and as to a ſingle Houſe, the Court was of Opinion, that Juſtices could not appoint Officers, which was the Reaſon why they did not determine the Settlement.

Mr. *Abney, on the ſame Side*, inſiſted on the Caſe of the *Q. v. Dolting*; and *ſo* was the *K. v. Rufford*, where a *Mandamus* was granted to appoint *Overſeers*. Ante 8.

As to the Exception that the Order is *too general*, it is ſufficient.

As to the *third Exception*, "That an Appeal being *joint* is wrong," though every Man may have a ſeparate Rate, yet they may join, becauſe the Words of the 43d *Eliz.* c. 2. are *Party and Parties aggrieved.*

Mr. Serjeant *Birch*, in ſupport of the Exceptions. The Caſe of *Dolting* ſtands alone, and nothing determined as to *Pariſhes*. As to the *ſecond* Exception, it ought *to appear* that they are right.

In a common Order of Removal, it is neceſſary to ſhew it was *upon Complaint*. That the Juſtices *Quorum unus**, that the Party was *likely to become chargeable* and removeable, and muſt adjudge the Place of his laſt legal Settlement; in the preſent Caſe, *the Largeneſs of the Pariſh is the only Point of Juriſdiction.*

* Not ſo now.

In this Caſe, the Largeneſs of the Pariſh only Point in Queſtion.

As to their paying *ſeparately* from *Uttoxeter*, it ought to have been *ſhewn*, that *thoſe Vills* had *Overſeers*, a Caſe in *Salk.* 480. that Juſtices cannot annex and conſolidate Pariſhes.

Mr. *Fazakerly:* It is now contended, that the 13 & 14 *Car.* II. c. 12. extends to *all Pariſhes in England*, &c. which, if it ſhould prevail, would make great Confuſion, and alter the preſent Method, by dividing *every Pariſh* that has *Vills*. That the Statute is not general, appears by the Words, many other Counties; the Caſe of *Dolting*, &c. are no Authorities, becauſe the preſent Caſe relates to *Vills* within *Pariſhes*, and the others are, that the Statute extends to *Places* that are *not* within *Pariſhes*,

They had no Juriſdiction to make this Rate *jointly*, and that was not a Matter proper for an Appeal, but ſhould have ſtood a Diſtreſs; Officers of *one* Pariſh might as well have rated the *next*, for inequality, &c. are proper only for Juſtices inquiry, and they ought not to quaſh Orders, where the Parties had no right of Appeal.

Order only ſays, for *ſuch Vills* OVERSEERS were duly appointed, but does not ſay how long, perhaps but a few Days before.

Mr. *Wyrly:* As at Common Law, no Proviſion was for the Poor, ſo all the Statutes made for that Purpoſe, are taken as Penal, and as laying a new Tax or Burthen on the Eſtates; and upon that Conſideration was the Reſolution in *Stillington v. Norton.* So the Exception, that the 13 & 14 *Car.* II. c. 12. does not extend to the County of *Stafford*, goes on this Reaſon, "That inferior Juriſdictions ought to "ſet out their Power; neither can they determine a Right which will affect the Pariſhes for ever, as "that of the Boundaries."

* LORD RAYMOND.

CHIEF JUSTICE*: It is a Caſe of conſiderable Conſequence, and we muſt have Copies of the Orders: The Reaſon of *Mandamus's* to appoint *Overſeers* in *Extra-Parochial Places* was, the Poor in ſuch Places ſhould not ſtarve: If a Pariſh is ſuch a one, as "by reaſon of the Largeneſs thereof, the Poor cannot be ſo conveniently maintained, then it comes within the Intent of the Statute, and whether this Point ought not to be ſet out.

Mr. *Juſtice* PAGE: Where *Vills* are thus *ſeparated*, it might bring *Ten Shillings* in the *Pound* on *one Vill*, that happened to have moſt Poor; it ſeems to put too great a Power in Juſtices.

ADJOURNED.

Juſtices on Appeal not confined to quaſh or confirm the Rate appealed from; but they might make a new one.

Trin. Term following, 2 *Barnard.* 170. This Matter coming now on again, *Judge* LEE ſaid, that he doubted whether the Appeal by the *three Vills* was not regular enough. Then as to the Power of the Juſtices upon Appeal, he obſerved, that it was certain, they were not confined either to quaſh or confirm the Rate appealed from, but they might make a new one; and he did not know whether they were tied up to preciſe Forms in their Orders.

The *Statute* which gives theſe Appeals, he obſerved, requires that they ſhould be by the Party grieved, but he remembered a Caſe in this Court, which was determined upon Debate and ſearch of Precedents; that an Order made on ſuch Appeal would be good, though it did not appear upon the Face of it, that the Appeal was by the Party grieved; and the Order was confirmed notwithſtanding ſuch Exception.

Then as to the Form of the preſent Order, he did agree, that the Seſſions had declared their Opinion in it, that the *three* VILLS ought to maintain their own Poor *ſeparately*; but when there comes after-

wards another Clauſe in the Order, which ſeems entirely independent of the former Clauſes, and in theſe Words, "*And we do further Order, that ſo much of the Rate, as requires the* PARISH OF UTTOXETER "AT LARGE, *to be any ways contributary to the Relief of the Poor of the* THREE VILLS *ſhall be quaſhed.*"

So that he did not ſee, why this *Order* was not a *general Order*.

For which Reaſon he thought it might be confirmed.

But the *reſt* of the COURT inclined to be of another Opinion.

Accordingly the Matter was *ordered*, To ſtand farther over.

2 *Barnard.* Where ſame Caſe is reported, 135, 170. and in 198. *Mich.* 6 *G.* II. *The Chief Juſtice* now delivered the Reſolution of the Court upon this Matter. He ſaid, they were all of Opinion, that one Part of the Order of Seſſions was bad, which appointed *Overſeers* over the *three* VILLS; becauſe it did not appear, whether they intended to appoint them over the *three* VILLS *jointly*, or over each of them ſeparately. But the reſt of the Order was thought good. Accordingly the firſt Part of it was *quaſhed*, and the reſt confirmed.

THE KING *v.* CRAKMARSH *, *Inhabitants of. Trin.* 8 *G.* II. *B. R.* 2 *Barnard.* 1734. 458. An appointment of *Overſeers* being returned upon a *Certiorari*.

* This is one of the *Vills* in the Pariſh of the *Uttoxeter*.

Serjeant *Birch* took *two* Exceptions to it;

Firſt, that it does not appear to be *under the Seal* of the Juſtices;

Secondly, that this *Appointment of Overſeers*, is for the *Vill*, not for the *Pariſh* of *Crakmarſh*.

With regard to the firſt of theſe Exceptions, the CHIEF JUSTICE ſaid,

That where a Coroner's Inqueſt is ſent up into this Court, he did agree *the Seals* of the Jurors muſt be affixed to it, becauſe *there* the *Original itſelf* is ſent up; but here the Tranſcript *only* is returned, and as *it is ſaid* to be under the *Hands and Seals* of the Juſtices, he thought it ſufficient.

With regard to the *ſecond* Exception, he ſaid, that though the Statute of 43 *Eliz.* has been conſtrued to extend only *to Pariſhes*; yet the Statute of 13 & 14 *Car.* II has been held to extend to *Extra-Parochial* Places; and that ſince that *Statute*, Overſeers are to be appointed by the Inhabitants of thoſe Places, equally as they were before by the Inhabitants *of Pariſhes* at large; and if they do not make ſuch Appointment a *Mandamus* will lie to compel them to do it.

Judge LEE ſaid, he remembered the *Court* was of the ſame Opinion in the like Caſe of this very Townſhip, and there they founded their Judgment on the Caſe of the *K. v. Stoke-lane*.

Mr. *Abney* ſaid too, in the Caſe of the *King* and *Rufford*, there was a *Mandamus* to the Juſtices of the County of *Nottingham*, to appoint *Overſeers*, and they returned, that the Place was *Extra-Parochial*; but that Return was not allowed of; and he ſaid, the Court was of the ſame Opinion in the Caſe of the *K. v. the Inhabitants of Belvoir*. Accordingly the preſent Motion was refuſed*.

* Ante 9.

* *N. B.* In the *King. v. Uttoxeter (Poſt.)* Mr. *Bearcroft*, in arguing againſt the *ſeparate* Appointments, ſaid, "As to the ſeparate Appointment, ſaid to have been confirmed by this *Court* "in 1734, the Queſtion was never before the *Court*; for upon ſearching the Office it ap- "pears, that the *Order* was filed the Day after the *Certiorari* was moved, and that no *adverſe* "Proceedings were had."

"*Lord Mansfield.* The Confirmation of the ſeparate Appointments in 1734, is ſhewn to "be no Authority: the Queſtion does not appear to have been raiſed."

I therefore have introduced the above Caſe here, merely to ſhew how far, either way, it affected the Queſtion before the Court, in the Caſe of the *King v. Uttoxeter*.

Mandamus granted to appoint *Overſeers* for a *Hamlet*, where there never had been any before, under 13 & 14 *Car.* II.

THE KING *v.* WESTMORLAND, *Juſtices of. Trin.* 19 & 20 *G.* II. 1 *Wilſ.* 138. Mr. *Harriſon* moved for a *Mandamus* to be directed to the Juſtices to appoint *Overſeers of the Poor* for the *Hamlet* of *Nethergraveſhip*, *Watsfield*, and *Churchfield*, (there never having been any *Overſeers of the Poor* there before,) upon the *Statute* 13 & 14 *Car.* II. c. 12. which gives Power to appoint *Overſeers (in large Pariſhes)* in *particular Hamlets*, as the *Statute* 43 *Eliz.* does in *Pariſhes at large*; AND IT WAS GRANTED upon an Affidavit, that there was Poor belonging to this *Hamlet*, which were chargeable to the *Hamlet* of *Kirkland*, which could not remove them, becauſe there were *no Overſeers* of *Nethergraveſhip*, &c.

Juſtices ought not to appoint *Overſeers* for ſeparate Parts of a Pariſh, unleſs it *appears*, that the Pariſh is *ſo large* as to make it *neceſſary* to call in Aid the 13 & 14 *Car.* II; and then the ſeparate Part muſt be *ſhewn* to be a *diſtinct* VILL.

THE KING *v.* MIDDLESEX, *Juſtices of. Trin.* 27 & 28 *G.* II. *Bott.* 17. On a Rule to ſhew Cauſe, why a *Mandamus* ſhould not go, to compel the *Juſtices* to appoint *Overſeers* for the *Townſhip* of *Kentiſh-Town*. It appeared by the Affidavit, that this *Pariſh* has *always* had TWO *Overſeers:* That a Rate has been made, as *one Rate* for the *whole Pariſh*; that their *Appointments* have been for the *whole Pariſh*, but that *each Overſeer*, had collected and paid within his *own Diviſion*; and if at the end of the Year, there is a Surplus in either of their hands, it is ſo much of it paid over into the hands of the *other Overſeers*, as to make them both equal: They have *one Workhouſe*; *one* Overſeer looks over it *one* Week, the *other* the *next*. It was objected to this Rule, that it would *diſmember* the *Pariſh*, which has been united to this Time: That when 43 *Eliz.* was made, and before the 13 & 14 *Car.* II. each *Pariſh* maintained its own Poor: That 13 & 14 *Car.* II. was made to accommodate *large Pariſhes*, where ſome Parts lay at a great Diſtance from others; and it was neceſſary for their Convenience, to have an increaſe of Officers: If that *Statute* was to extend to all *Towns*, *Pariſhes*, and *Vills*, the populous Parts of the *Pariſhes* would be moſt burthened, and the Out-parts of them, and the greateſt Extent of Land, would be in a great Meaſure excuſed.

To intitle the Petitioners to what is now prayed, it ſhould be ſhewn that they are *ſuch a Pariſh* as cannot receive the Benefit of the 43d *Eliz.* without the Aid of the 13 & 14 of *Car.* II. It is not ſworn that TWO *Overſeers* are not ſufficient. It does not appear that this *Vill* of *Kentiſh-Town* is not a *diſtinct Vill* or *Townſhip*; ſo it is not brought *within* the 13 & 14 *Car.* II. It was anſwered, that this Writ determines nothing of itſelf, but is a means of trying this *Fact*, and that the Juſtices may try the ſpecial Matters*. That this was ſo *populous a Pariſh*, that it required more Attendance than any in the *North*.

* BULLER, J. in the *K. v. Peterborough Juſtices*, ſaid, "The Court muſt have probable Ground laid before them, to ſhew that the Place is a *Vill*, or they will not interpoſe.

By the COURT. If this is a Caſe that falls within the 13 & 14 *Car.* II. a *Mandamus* is a Writ of *Right*, and the Court muſt grant it. It has been determined, that this *Statute* is not to be confined to the Counties mentioned in the *Statute*. This has never been *conſidered* as a *ſeparate Pariſh:* the TWO *Overſeers* have been uſually appointed for the *whole Pariſh:* What is declared from the Affidavit ſhews that they can do very well under the 43d *Eliz.* without calling in Aid the 13 & 14 *Car.* II. for they have TWO *Overſeers*, and the Methods they have uſed to collect their Rates, and to take Care of their Poor, is very juſt and reaſonable.

To bring this within the *Statute*, they muſt ſhew this to be a *diſtinct* VILL.

We expected they would have ſhewn, that they had *ſeparate Overſeers*, maintained their *own Poor* ſeparately, and had a *ſeparate* Rate.

RULE DISCHARGED.

PEART *and another v.* WESTGARTH *and another. Hil.* 5 *G.* III. *B. R. Burr.* 1610. Upon ſhewing Cauſe againſt a *Mandamus* "to appoint *four* OVERSEERS for the *whole Pariſh* of STANHOPE, in "the County Palatine of *Durham*," the Queſtion was, Whether the ſeveral Diſtricts within it, were one *entire* Pariſh, Townſhip, and Village, within the intent and meaning of the ſeveral *Statutes* made *for the Relief of the Poor*; and for that Purpoſe have had, and of Right ought to have *one joint Appointment* of OVERSEERS OF THE POOR, for the *joint* Relief and Maintenance of the Poor, *in and through-*

out

PEART and another, v. WESTGARTH.

out the PARISH; or, whether the ſaid ſeveral Diſtricts, being divided into *ſix* ſeveral *Conſtableries*, conſtituted four *diſtinct and ſeparate* Townſhips or Villages, within the intent and meaning of 13 & 14 *Car.* II. c. 12. ſ. 21.

It was at the laſt Aſſizes at *Durham*, tried upon a feigned Iſſue, by the Conſent of the Parties; and a Verdict was found for the *Plaintiffs* (with 1*s.* Damages, and 40*s.* Coſts) ſubject to the Opinion of this Court, upon the following Caſe.

That from the 43d *Eliz.* to the 9th *G.* I. (1723) the *Pariſh* of STANHOPE had *one joint Appointment of* OVERSEERS OF THE POOR, of the ſaid *Pariſh*; and during all that Time, the *Poor* of the ſaid *Pariſh*, were *jointly* relieved and maintained by *entire* and *general* Rates upon the *whole* PARISH.

During the Time abovementioned, there were *four* Churchwardens and *four* OVERSEERS OF THE POOR; which *four* OVERSEERS were reſpectively nominated out of *each* of the *four* QUARTERS or DISTRICTS, within the ſaid PARISH, called *Foreſt* Quarter, *Newlandſide* Quarter, *Park* Quarter, and *Stanhope* Quarter, *viz. one* out of *each* of theſe *Quarters*; and in *each* of theſe *Quarters* there was *one* of the ſaid OVERSEERS and *one Churchwarden*, who collected the *Poor's Rates*, in their ſeveral *Quarters* or *Diſtricts*; but the Money collected by the ſeveral *Churchwardens* and *Overſeers* was levied under one *entire* Aſſeſſment, upon the *whole* PARISH, and carried to *one* general *Fund*, and was applied to the *joint* Relief of *all* the Poor of the ſaid *Pariſh*.

The *Pariſh* is *twenty Miles* in *length*, and *eight Miles* in *breadth*. The PARK, FOREST, and STANHOPE *Quarters*, are *each* a *diſtinct Conſtablery*; and the NEWLANDSIDE *Quarter*, conſiſts of *three Conſtableries*; but theſe *three Conſtableries*, compoſe and are conſidered as *one Quarter* only.

On the 17th *July*, 9 *G.* I. at the *General Quarter Seſſions*, holden at the City of *Durham*, in and for the County of *Durham*, it was ordered, "That the ſeveral *Townſhips* or *Conſtableries* of STAN-"HOPE, FOSTERLEY, NEWLANDSIDE, EASTGATE, and WESTGATE, ſhould *ſeparately* maintain "their *own* proper Poor."

But the Motion for this Order having been oppoſed on the Behalf of the *Conſtablery* of FOREST, was to be confirmed, unleſs Cauſe ſhewn at the *next Quarter Seſſions*.

From that Time there have been *ſeparate Appointments* of OVERSEERS OF THE POOR, for *each* of the ſaid *four* Quarters or Diſtricts; and each of the ſaid Quarters maintained their *own Poor ſeparately*; excepting that about *twelve Years* ago, *two* Townſhips or Conſtableries called *Biſhopley* and *Foſterley*, within *Newlandſide* Quarter, ſeparated themſelves from the reſt of that Quarter, and have ever ſince had *ſeparate* Overſeers; and maintained their own Poor ſeparately.

The Caſe further ſtated, that Orders of *Removal* had from Time to Time been made ſince the Year 1729, to the Year 1761, from *one* of the ſaid Diſtricts to *another*; and *Appeals* made by *one* Quarter againſt *another*, concerning Orders of Juſtices relating to the Poor of each.

The Queſtion was *general*.—Whether the Plaintiffs were intitled to recover? But the *particular* Queſtion debated was, Whether the ſeveral Places or Diſtricts were *one entire* PARISH, TOWNSHIP, or VILLAGE; or, whether the ſaid ſeveral Places, being divided into *ſix* ſeparate *Conſtableries*, conſtituted *four* diſtinct and ſeparate TOWNSHIPS or VILLAGES within the 13 & 14 *Car.* II. c. 12.

This Caſe was firſt argued by WALKER for the *Plaintiffs*, and Mr. DAWSON for the *Defendants*.

Mr. WALKER argued againſt the Diviſion of this *Pariſh* into ſeparate *Townſhips*.

He ſtated the 21ſt *Sect.* of 13 & 14 *Car.* II. c. 12. which directs, that in the Counties of *Durham*, &c. where, by reaſon of the Largeneſs of the Pariſhes, they cannot reap the Benefit of the Act of 43 *Eliz.* c. 2. the Poor within every *Townſhip* or *Village* ſhall be maintained and ſet on Work, within the reſpective *Townſhip* and *Village*; and there ſhall be yearly choſen, according to 43 *Eliz.* c. 2. *two* or *more* OVERSEERS OF THE POOR, within *every* of the ſaid *Townſhips* or *Villages*, who ſhall execute all the Powers for the Relief of the Poor within the ſaid *Townſhip* or *Village*, as the ſaid Act directs.

And

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* Ante. 60.

And he inſiſted, that in Order to intitle themſelves to a *Diviſion*, it muſt be *ſhewn*, "That the "*Pariſh* was ſo large, that they could not otherwiſe have the Benefit of the 43 *Eliz.* c. 2." To prove this, he cited the *King v.* the Juſtices of *Middleſex* *, relating to the Inhabitants of *St. Pancras* and *Kentiſh-Town*. And he mentioned a Caſe of *Eaſt* and *Weſt Bradfield*, near *Sheffield*, in *Yorkſhire:* and he ſaid, that in *Wolſingham* Pariſh, (the next Pariſh, to this, and under the ſame Circumſtances of *ſeven Conſtableries*,) a Diviſion was made *by Conſent*, not by an *Order of Seſſions*.

It does not appear that this Pariſh cannot have the Benefit of the 43 *Eliz.* c. 2. The contrary rather appears.

There are no *Facts* to warrant this *Diviſion*; nor can it be ſupported under the 13 & 14 *Car.* II. The Seſſions had *no Power* to make it. Neither the *Seſſions* nor the *Court* have *Power* to make a *Diviſion*, but *upon Facts*, which ſhew the *Pariſh* to be *ſo large, that it cannot have the Benefit of the* 43 *Eliz.*

It ſhall be *preſumed*, "That the Act *may* be put in Force;" unleſs the contrary appears.

He added, That it comes out, upon Experience, that *Pariſhes* are *too ſmall*, inſtead of *too large*; and that the Legiſlature ſhould rather, *upon Principle*, collect *ſeveral* into ONE, than divide *one* into *ſeveral* Parts.

Mr. DAWSON, *contra*, argued for the Diviſion; premiſing that the preſent Point, has never been *judicially* determined.

The Queſtion depends upon 13 & 14 *Car.* II. c. 12. and 43 *Eliz.* c. 2.

The *Plaintiffs* ought not to recover: Becauſe, *Firſt*, The *Pariſh* is *ſo large*, as to be *within* theſe *Statutes*; and, *Secondly*, The Seſſions *had* a Power to make this Diviſion.

Firſt, Though it is ſtated, "That this *Pariſh* was one *entire Pariſh*, from the 43 *Eliz.* till 9 *Geo.* I." yet it is alſo ſtated, that there were *four* CHURCHWARDENS and *four* OVERSEERS; *one* out of *each* QUARTER. Indeed, it is not *expreſsly* ſtated, "that it is a *populous* Pariſh." But this ſufficiently appears by the *Circumſtances:* And it appears that it was ſo, at the *Time* of making the Act of 43 *Eliz.*

The preſent Order of Seſſions was made 9 *Geo.* I. for the *ſeparate* Diviſions of this *Pariſh*, to maintain their own *Poor*, *unleſs* Cauſe was ſhewn by the *Conſtablery* of *Foreſt Quarter* at the then next Seſſions. No Cauſe was ſhewn: And they have acquieſced under that Order, ever ſince; and have, now, maintained their own Poor *ſeparately*, for *forty Years*.

As to the Caſes mentioned on the other Side.—The *King v.* the *Juſtices* of *Middleſex*, was for a *Mandamus* to appoint *Overſeers* of the North Diviſion of *Kentiſh-Town*; but the *Mandamus* was denied; becauſe it appeared, "that the PARISH *could* reap the Benefit of the 43 *Eliz.*" And it did not appear, that the North Diviſion of *Kentiſh-Town* was a *Townſhip* or *Vill*. As to *Bradfield* Caſe, no Order of Seſſions was made there, or any Thing done to ſupport a Diviſion. And, as to the *Wolſingham* Caſe, it was given up without Argument.

Therefore, there has been no *judicial* Determination at all, as far as appears upon this Matter.

The COURT, upon this firſt Argument, thought the *Juſtices* had *no* Power to *divide Pariſhes*, (to fritter Pariſhes into Pieces, as WILMOT, *Juſtice*, expreſſed himſelf;) and,

LORD MANSFIELD ſaid, he believed the Point of *Policy* was as Mr. *Walker* ſaid, *namely*, "That "*Pariſhes* ſhould rather be *larger* than *ſmaller*, than they are."

It was ordered to ſtand for further Argument.

And it was again argued, by Mr. WEDDERBURNE, for the *Plaintiffs*; and Mr. CLAYTON, for the *Defendants*.

Mr. WEDDERBURNE enforced the Arguments which had been urged by Mr. WALKER, and obſerved that, all along from the 43 *Eliz.* to 9 *Geo.* I. the *Pariſh* had only *one* joint Appointment for the *whole*

whole Pariſh: ſo that it was manifeſt, not only that they *could*, but that they actually *had* for many Years reaped the Benefit of the 43 *Eliz.* And no *Authority* for this Diviſion appears in the Caſe.

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The Quarter-Seſſions had no Power to make it.

The Truth is, that the *rich* Part of the Pariſh, want to ſeparate themſelves from the *Poor* Part, and throw the Burthen upon them.

Mr. CLAYTON, *contra*; inforced Mr. DAWSON's Arguments; and particularly that of the Diviſion having been acquieſced under for forty Years; and the Annual Appointments of *Overſeers* by two Juſtices having been accordingly, ever ſince the Year 1723.

LORD MANSFIELD ſaid he had no Doubt on the *firſt* Argument.

Policy of 13 & 14 *Car.* II. miſtaken. Diviſions ought to be *enlarged* rather than *diminiſhed.*

The Policy of this Law of the 13 & 14 *Car.* II. was miſtaken: It went upon a *wrong* Principle. The Diviſions ought rather to be *enlarged*, than *diminiſhed.*

As to the Queſtion itſelf.—Conſider *firſt*, What was done. *Secondly*, Upon what Foundation?

Inability to reap, &c. of 43 *Eliz.* ought to *appear*; but the *contrary* appearing here, there is *no Foundation* for the Diviſion.

It ought to *appear*, "That there was an INABILITY in the *Pariſh*, to have the Benefit of the Act of 43 *Eliz.* Now here, *no* ſuch Inability appears; but quite the contrary, for a great Number of Years: So that there is *no Foundation* for the Diviſion."

The *Acquieſcence* under it was upon a falſe Notion, "That the Seſſions *had* ſuch a Power;" which they had *not*. And there is no Inconvenience in ſetting right this wrong Uſage which has obtained for forty Years.

In the Caſe of *Kentiſh-Town*, all the Judges held, "That the Foundation of ſuch a Diviſion of a "*Pariſh*, muſt be an *Inability* of having the Benefit of the 43 *Eliz.*"

Here the *Foundation* is wanting.

Therefore Judgment muſt be for the *Plaintiffs*.

WILMOT, *Juſtice*—alſo thought, that the larger the Circle, the better: Therefore it would be better to *enlarge* than to *leſſen* the Diviſions.

The Statute 13 & 14 *Car.* II. goes upon this *Baſis*, "That the *Pariſh* is ſo *large*, as that it *cannot* "have the Benefit of the 43 *Eliz.*" This, therefore, is a Fact that ought to be quite *clear* and *certain*: Whereas on the contrary, it appears in the preſent Caſe, "That this *Pariſh* actually *had* that Benefit "from 1602 to 1723, above 120 Years."

The Seſſions do not ſeem to have had any Sort of Power to make ſuch an Order; therefore their Order is a mere Nullity. It was not made upon any Appeal; but upon a Motion made on Behalf of ſome of the *Quarters*, and oppoſed by another.

The *ſubſequent* Uſage for forty Years, cannot vary the Right. For, we cannot *preſume*, "That "*omnia ritè acta ſunt*; becauſe we *ſee* that it was founded upon that Order of Seſſions; and it does not ap- "that the *Pariſh is ſo large*, that it *cannot* have the Benefit of the 43 *Eliz.*"

Therefore they ought to appoint running Overſeers over the *whole* Pariſh.

By the COURT *.

Judgment for the PLAINTIFFS."

* *Deniſon* and *Yates*, Juſtices, were abſent.

THE KING *v.* BEEDING, *otherwiſe* SEAL, *Inhabitants of.*—*Trin.* 13 *Geo.* III. *Cald.* 90. The Seſſions for the County of *Suſſex*, upon the Appeal of *George Boughey*, *Eſquire*, quaſh a Rate duly allowed, for the Relief of the Poor of the ſaid Pariſh, and ſtate the following Caſe:

To ſupport the ſeparate Diviſion of a Pariſh under *Stat.* 13 & 14 *Car.* II. it muſt appear clearly, 1ſt, That the Pariſh is ſo large, that it cannot reap the Benefit

That the Pariſh of *Beeding*, otherwiſe *Seal* is a large and extenſive Pariſh, *Part* of which ſaid *Pariſh* is called the *Tithing* of *Bewbuſh*: And that the ſaid *Tithing* is *twenty Miles* from the Church of the ſaid *Pariſh* of *Beeding* otherwiſe *Seal*, and *that it cannot reap the Benefit of the Act of Parliament of the* 43 *Eliz. without Inconvenience*: And that the ſaid *Tithing* was rated generally to the Poor of the ſaid *Pariſh* of *Beeding* otherwiſe *Seal*, at large, and not as a *ſeparate Tithing*, till the Year 1758; when upon

of 43 *Eliz.* 2d, That regular Officers have been appointed; And, 3d, That proper Levies have been made. A private Agreement will not alter the Law.

upon the Appeal of *Francis Smart*, Gent. an Order of Seſſions was made in the Words following: It is ordered by this Court, *all the Parties conſenting*, that the ſaid Poor Rate be quaſhed, as to the Inhabitants of the *Tithing* of *Bewbuſh*, within the ſaid *Pariſh*; the ſaid Appellant, *Francis Smart*, hereby undertaking to pay the Churchwardens and Overſeers of the Poor of the *other Part* of the ſaid *Pariſh* of *Beeding* otherwiſe *Seal*, all Charges and Expences they have been at in regard to the Maintenance and other Expences of the Poor of the ſaid *Tithing* of *Bewbuſh*, after a Deduction of what the *Overſeers* of the Poor of the ſaid *Pariſh* have received from any of the Inhabitants of the ſaid *Tithing* of *Bewbuſh*, ſince *Eaſter* laſt; and alſo to enter into a Bond in a Penalty of 200 *l.* to the ſaid Inhabitants of *Beeding*, to ſave harmleſs and keep indemnified from Time to Time, and at all Times hereafter, the Pariſhioners and other Inhabitants of the ſaid *Pariſh* of *Beeding (except the ſaid Tithing)* from all Charges and Expences, that may happen to them in regard to the Poor of *that Part* of the ſaid *Pariſh* of *Beeding*, called the *Tithing* of *Bewbuſh*; they the ſaid Pariſhioners and Inhabitants of the ſaid *Pariſh* of *Beeding* undertaking, not to rate or tax the *ſaid Part* of the ſaid *Pariſh* of *Beeding*, called *Bewbuſh*, towards the Relief of the Poor of the *other Part* of the ſaid *Pariſh* at any Time or Times hereafter; and that different *Officers* ſhall or may hereafter be appointed to the ſaid *Tithing* of *Bewbuſh*.

That from that Time the ſaid *Tithing* of *Bewbuſh* has never been rated to the *Pariſh* of *Beeding* generally, but have ſeparately maintained their *own Poor*: But it did not appear, whether there had been any *Overſeer* appointed, or any Poor-Rate made for the ſaid *Tithing* before the Year 1772, or not; when the Lands lying in the ſaid *Tithing* were included in a Rate made by the ſaid *Pariſh* of *Beeding*.

And it not appearing unto us, whether the Bond, mentioned in the ſaid recited Order of Seſſions was ever entered into or not, it is ordered, that the ſaid Rate be quaſhed as to the ſaid *Tithing*.

Skillington *v.* Norton, *ante*. 54.

DUNNING and BURRELL ſhewed Cauſe in Support of this Order of Seſſions; inſiſting that this Caſe had found *preciſely that*, which, from the Report in 2 *Lev.* 142 *, ſeems to have been the *only* Requiſite to Succeſs upon that ſpecial Verdict, *viz.* "That the *Pariſh* is *ſo large*, that Diſtribution parochial cannot *well* be made."

That indeed, *without* an *expreſs Finding*, the Situation of this Place, a little *inſulated Tithing*, at the Diſtance of twenty Miles from the *Pariſh*, of itſelf *evidenced* the Inconvenience, and pointed out the *Neceſſity* of its being aided: That the Burthen upon *Pariſh-Officers*, who execute their Offices without any Recompence for their Trouble, was otherwiſe grievous and intolerable: That the Phraſe of "reaping the Benefit of the *Stat.* 43 *Eliz.*" in the *Stat.* of *Car.* II. muſt mean a *full* and *perfect* Benefit; for that there was ſcarce any Diſtrict *ſo large*, as to be incapable of being in *ſome Degree* benefited by it: And that here a *full* and *perfect* Benefit was ſtated not to be in their Power: But that in *Peart* and *Weſtgarth*, it appeared always to have been *in their Power*, and for a long Period *actually* enjoyed.

Ante 61;

As to the other Objection, that a *Tithing* does not fall within the Deſcription of the Act; it was a Word of an Import much *leſs vague* than *Diviſion*, the Term uſed in the Caſe of the *King* againſt the Inhabitants of *St. Giles's in the Fields*; that it had a known, definite, legal, Import, conſiſting of *ten* Families, with a proper Officer, when only *three* conſtituted a *Vill*, which was the very *Phraſe* of the Act.

BEARCROFT, in Support of the Rule to quaſh this Order, inſiſted, that the Agreement of 1758, could not be conſidered as a *legal Diviſion* of the *Pariſh*; that it was not the Act of the Seſſions, but a mere Matter of Accommodation and Compromiſe between the *Tithing* and *Pariſh*, which could at moſt be no further obligatory than with reſpect to the *ſpecific* Matter, than the Subject of Controverſy; that the only legal Way of executing the Powers given by the *Stat.* 13 & 14 *Car.* II. was for two Juſtices to appoint Overſeers for this Diviſion *ſeparately*: That unleſs at the Time of making the Rate, a legal Separation exiſted, the Rate was regular: That there was not a ſingle Circumſtance here

to

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to ſhew *Inability*; and therefore the Caſe of *Peart* and *Weſtgarth* was in point: That the Object of the Treaty had been the private Purpoſes of an Individual, whoſe Property the *Tithing* almoſt altogether was, without the leaſt Regard to the Public: For had public Convenience dictated the Meaſure, it would have been adopted Years ago, as well as ſettled then in a very different Mode.

LORD MANSFIELD. Without going into the Doctrine upon the Conſtruction of the *Stat.* 13 & 14 *Car.* II. which is laid down in *Peart* and *Weſtgarth*; there was no Pretence for quaſhing this Rate. The Order of the Seſſions is every Way wrong. The Rate for the whole Diviſion could only have been quaſhed; for it was by Agreement only, that this ſeparate Diviſion could exiſt, as ſuch; and that Agreement has neceſſarily been abandoned in Argument, as never having been carried into Execution. The Rate, therefore, at the Time it was made, does not appear to be open to any Exception: And the true legal Way of raiſing the Queſtion is, by appointing Overſeers.

ASTON, *Juſtice*.—Whatever may be the Policy of the Act, it muſt appear clearly,

Firſt, That the Place is ſo large, as not to be able to receive the Benefit of the *Stat.* 43 *Eliz.*

Secondly, That regular Officers have been appointed; and,

Thirdly, That proper *Levies* have been made: But there is nothing here, but an unexecuted private Agreement; the not enforcing of which, is probably an Inconvenience, felt by an intereſted Individual, but not affecting the *Pariſh* or the Public.

WILLES and ASHURST, *Juſtices*, concurring.

Rule abſolute;
Order of Seſſions quaſhed; and
Rate affirmed.

THE KING *v.* UTTOXETER, *Inhabitants of. Eaſ.* 20 *Geo.* III. *B. R. Cald.* 84. Two Juſtices nominated and appointed *John Ward*, *Stephen Wilcox*, and *Edward Cope*, OVERSEERS *of the Poor* of the *Townſhip* of *Uttoxeter*, in the County of *Stafford*; and, by *another* Order, appointed *James Stubbs*, and *William Ford*, OVERSEERS *of the Poor* of the *Vill* of *Creighton* and *Stranſhall*, in the ſame County; and alſo, by *another* Order, appointed *John Finnemore* and *John Goodrich*, OVERSEERS *of the Poor* of the *Townſhip* of *Crakmarſh*, in the ſame County: Two Juſtices alſo appointed *A. B.* and *C. D.* OVERSEERS *of the Poor* of the *Townſhip* of *Loxley*, in the ſame County. The Seſſions, on Appeal by the Inhabitants of the ſaid *Townſhip* of *Uttoxeter*, confirm all theſe Appointments, and ſtate the following Caſe:

An Appointment of ſeparate Overſeers for the Sub-diviſions of a Pariſh, cannot be ſupported; unleſs the Fact is *expreſsly found*, that the Pariſh would not otherwiſe receive the Benefit of 43 *Eliz.*

That the Pariſh of *Uttoxeter* is *five* Miles in Length, and *five* in Breadth, and contains the *Townſhips* of *Uttoexter*, *Crakemarſh*, *Creighton*, *Stranſhall*, and *Loxley*. The Town of *Uttoxeter* is a *large Market Town*, much burthened with Poor. The *Townſhips* of *Crakemarſh*, *Creighton*, *Stranſhall*, and *Loxley*, are, in general, divided into conſiderable Farms.

The ſaid *Townſhips* were and are one *entire* Pariſh; and did till the Year 1730, *jointly* relieve and maintain the Poor in and throughout the *Pariſh*.

It appears by the *Veſtry-Book* of the ſaid *Pariſh*, that from the Year 1643, to the Year 1703, *Overſeers* have been elected for the ſaid reſpective *Townſhips* in the following Manner, *viz.* Two Overſeers of the Poor for the Town of *Uttoxeter*; *one* for *Loxley*; *one* for *Crakemarſh*, *Creighton*, and *Stranſhall*; and *one* for the *Woodlands*. The *Woodlands* is Part of the *Townſhip* of *Uttoxeter*. It does not appear, from the *Veſtry-Book*, or other Evidence, that, from the Year 1703 to 1727, *any Overſeers* were elected for the ſaid *Townſhips*, but *two* Overſeers were elected for the ſaid *Pariſh*, and *Sideſmen* for the ſaid *Townſhips*.

On the 10th of *November*, 1730, in Purſuance of a *Mandamus* from the Court of *King's Bench* an Aſſeſſment for the Relief and Maintenance of the Poor of the ſaid *Pariſh* of *Uttoxeter*, upon all

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the Inhabitants and Occupiers of Land within the ſaid *Pariſh*, was duly ſigned by two Juſtices of the Peace.

In *Trinity* Term, in the 5th and 6th Years of *Geo.* II. in the Year 1731, a *Mandamus* iſſued from the Court of *King's Bench* to the Juſtices of the County of *Stafford*; reciting, that there were divers Houſholders within the ſaid *Pariſh* of *Uttoxeter*, able to contribute to the Relief of the Poor of the ſaid *Pariſh*; and that there were no *Overſeers* of the Poor of the ſaid *Pariſh* appointed to make Rates on all and every the Inhabitants and Occupiers of Lands, Houſes, and other Things rateable within the ſaid Pariſh, for the Relief of the Poor of the ſaid *Pariſh*, and *ordering* the ſaid Juſtices, to appoint *two* or more *Overſeers of the Poor* for the ſaid *Pariſh* of *Uttoxeter*. In Purſuance of the ſaid *Mandamus*, on the 30th of *July* following, *two* Juſtices of the Peace, for the County of *Stafford*, appointed TWO *Overſeers of the Poor* for the *Pariſh* of *Uttoxeter*.

At the General Quarter-Seſſions for the County of *Stafford*, held on the 5th of *October*, 6 *Geo.* II. and in the Year 1731, the Inhabitants of the *Vills* of *Crakemarſh*, *Creighton*, and *Stramſhall*, appealed againſt the Aſſeſſment, made on the 12th Day of *Auguſt* preceding, for the Maintenance of the Poor of the *Pariſh* of *Uttoxeter*; and on full Hearing of Counſel, and Conſideration of the Evidence given, as well for the ſaid *Vills*, as for the *Townſhip* of *Uttoxeter*, the COURT was of Opinion, that the Inhabitants of the ſaid *Vills* of *Crakemarſh*, *Creighton*, and *Stramſhall*, (for which *Vills* Overſeers of the Poor had been duly appointed, and Poor's Rates duly made and allowed, before the making of this ſaid Aſſeſſment or Rate appealed againſt,) ought to maintain, and accordingly did *order* that they ſhould maintain *their own* Poor, *diſtinctly* and *ſeparately* from the *other Parts* of the ſaid *Pariſh* of *Uttoxeter*: And the COURT did further order, that ſuch Part of the ſaid Aſſeſſment or Rate appealed againſt, as charged the Inhabitants of the ſaid *Vills* of *Crakemarſh*, *Creighton*, and *Stramſhall*, for, or towards, the Maintenance of the Poor of the ſaid *Pariſh* of *Uttoxeter*, in reſpect of what they hold or occupy within the ſaid *Vills*, ſhould be quaſhed and diſcharged; and the ſame was accordingly by the Court quaſhed and diſcharged.

The ſaid Order, in *Michaelmas Term* following, was removed by *Certiorari* into the Court of *King's Bench*; and the Court of *King's Bench* in *Michaelmas Term*, the 6 *Geo.* II. *ordered*, that the Order of Seſſions, as to ſuch Part of it, as *orders* that, the Inhabitants of the *Vills* of *Crakemarſh*, *Creighton*, and *Stramſhall*, in the *Pariſh* of *Uttoxeter*, ſhall maintain their own Poor, *diſtinctly* and *ſeparately* from the *other Part* of the ſaid Pariſh of *Uttoxeter*, be quaſhed for the Inſufficiency thereof: And as to the *other* Part of the ſaid *Order*, for quaſhing and diſcharging ſuch Part of a certain Aſſeſſment or Rate made for the Maintenance of the Poor of the ſaid *Pariſh* of *Uttoxeter*, as charges the Inhabitants of the ſaid *Vills* of *Crakemarſh*, *Creighton*, and *Stramſhall*, towards the Maintenance of the Poor of the ſaid Pariſh of *Uttoxeter*, in reſpect of what they held within the ſaid *Vills*, be affirmed.

1733. In *Michaelmas Term*, in the 7th Year of *Geo.* II. a *Mandamus* iſſued from the Court of *King's Bench*, to the Juſtices of the County of *Stafford*, reciting, that there were divers Houſholders within the ſaid *Pariſh* of *Uttoxeter* able to contribute to the Relief of the Poor of the ſaid *Pariſh*; and that there were no *Overſeers* of the Poor of the ſaid *Pariſh*, appointed to make Rates on *all and every* the Inhabitants and Occupiers of Lands, Houſes, and other Things rateable within the ſaid *Pariſh*, for the Relief of the Poor of the ſaid *Pariſh*; and *ordering* the ſaid Juſtices to appoint *two* or *more* OVERSEERS of the Poor for the ſaid *Pariſh* of *Uttoxeter*.

On the 15th of *April* 1734, *two* Overſeers were appointed for the *Vill* of *Crakemarſh*, TWO other *Overſeers* for the *Vill* of *Creighton*, TWO other *Overſeers* for the *Vill* of *Stramſhall*, TWO other *Overſeers* for the *Townſhip* of *Uttoxeter*, and TWO other *Overſeers* for the *Vill* of *Loxley*; by *five* ſeparate Appointments; each Appointment ſigned by the ſame *two Juſtices* of the Peace for the County of *Stafford*.

On

On the 27th of *May* following, a *Certiorari* iſſued to remove the ſaid *five* Appointments in the Court of *King's Bench*, which were accordingly removed; and on *Saturday* next after the Morrow of the *Holy Trinity*, 1734, the ſaid *five* Appointments were affirmed by the Court of *King's Bench*.

Since the Year 1734, *Overſeers* have been *ſeparately* appointed for *each* of the ſaid *Townſhips*, and the Poor of the ſaid *Townſhips* have been *ſeparately* maintained.

WALLACE, *Sollicitor General*, DUNNING, and LEYCESTER, ſhewed Cauſe in Support of theſe Appointments; and contended, that it was not neceſſary to ſhew by Argument, that there was an *Inability* in this *Pariſh* to receive the Benefit of the *Stat.* 43 *Eliz.* c. 2. as it was ſtated, as it appeared from the Caſe itſelf, that they had not received the Benefit of it: That though, by that Act, no more than *four Overſeers* could have been appointed, yet from the Year 1643 to 1703, there never were leſs than *five* appointed in this *Pariſh*; and that as *twenty* Years of this Period were antecedent to the *Stat.* 13 & 14 *Car.* II. it was evident from this Irregularity at that Time, that they could not have the Benefit of the Act of the 43 *Eliz.*; and that this was therefore, *probably*, one of the many Caſes, that produced the Act of *Car.* II.

That the Court would alſo ſee *ſtrong* Reaſons, before they would be induced to interpoſe and overturn a Practice that had prevailed ever ſince the Year 1734, eſpecially when fortified by ſuch an Uſage as is ſtated before the Act of *Car.* II.

BULLER, *Juſtice*. But ſhould not the Caſe have *expreſsly* found, that the PARISH *could not* receive the Benefit of the *Stat.* of *Eliz.*?

DUNNING. If that Fact is to be collected from the Circumſtances ſtated; if it ariſes, by Inference, from the finding, it need not be *directly* and in *Terms* expreſſed: That it was a Maxim to preſume every Thing in Favour of *Orders*, though, as to *Convictions*, the Rule was otherwiſe: That in theſe laſt, unleſs enough is ſtated to prove them *right*, the *Court* takes them to be *wrong*; but that in *Orders*, unleſs enough is ſtated to prove them *wrong*, the *Court* will *preſume* that they are *right*: That, from all the Facts ſtated, the clear Reſult in the Minds of the *Juſtices* muſt have been, that this *Pariſh* could *not* have the Benefit of the *one* Statute, without the Aid of the *other*: It may be ſaid indeed here, that the *Diſtricts* of the *Pariſh* are not *now* as they were *anciently*; but ſtill the only Queſtion is; if they are altogether of ſuch a Nature and Extent, as proves their Inability unaſſiſted, of reaping the Benefit of the *Stat.* of the 43 *Eliz.*; and then, as Trade and Population fluctuate, the Diſcretion of the Magiſtrate is to vary their Limits.

That the Caſe of the *King v. the Juſtices of Middleſex*, and of *Peart* and *Weſtgarth*, which would be relied upon on the other Side, were totally different from the preſent: That in the *firſt*, the *Appointment* of Overſeers, and alſo the *Rate*, had been uniformly *joint*, and for the *whole Pariſh*, down to the very Time of the Queſtion being moved; and in the other, down to the Year 1723. Ante 60.

That it was *evident*, therefore, that theſe *Pariſhes* muſt have had the Benefit of the 43 *Eliz.*: That there was no Argument to oppoſe to this in the *firſt* Caſe; and only a *modern* Practiſe in the *laſt*: But that the preſent Caſe came within the very Terms of the Reſolution in the *King v. the Juſtices of Middleſex*; which were, that the *Stat.* 13 & 14 *Car.* II. applied only to *Pariſhes*, in which, *at the Time of Paſſing that Act*, the Benefit of the *Statute* of the 43 *Eliz.* could not be had: Which was, upon the Fact found, evidently the Caſe of the *Pariſh* of *Uttoxeter*.

That the *Mandamus* of 1733 had properly not been oppoſed: That no return to it is ſtated: And that, on the contrary, ſoon afterwards *four* ſeparate Appointments appeared to have been made and confirmed in this Court.

That the Determination of this very Caſe, as ſtated in 1731, was deciſive: As that Part of the Order of Seſſions, which quaſhed the Aſſeſſment of *Vills* for the Maintenance of the Poor of the *Pariſh*, was affirmed: And, though it was alſo true, that that Part of the Order, which directed

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that the *Vills* ſhould maintain their Poor *diſtinctly* and *ſeparately* from the *Pariſh*, was quaſhed; yet that the *Court*, in doing this, went upon a mere *Defect of Form* in the *Order*, it not appearing from thence, whether the Seſſions intended to appoint *Overſeers* over the *three Vills jointly*, or over *each ſeparately:* And that it had been the ſtrong Inclination of *one* of the *Courts* (LEE, *J.*) to have affirmed the Order *generally*.

BEARCROFT in Support of the Rule to quaſh theſe Appointments, inſiſted, that the Caſe of *Peart* and *Weſtgarth* concluded upon the Queſtion; it having been there adjudged, that unleſs *Inability* to receive the Benefit of the 43 *Eliz.* is *expreſsly ſtated*, the Court will take it to be otherwiſe.

That *there*, in the *Pariſh* of *Stanhope*, it was alſo in itſelf much more probable, that they *could not* have the Benefit of the Act; the Extent of that *Pariſh* being twenty Miles in Length and eight in Breadth; and this *only* five in *each:* And there the Court diſregarded a Cuſtom of *forty Years*.

* *N. B.* This is the K. *v.* Crakmarſh, *ante* 59.

That as to the *ſeparate* Appointment, ſaid to have been confirmed by this Court in 1734 *, the *Queſtion* was never before the *Court*; for, upon ſearching the Office, it appears that the *Order was* filed the Day after the *Certiorari* was moved, and that no *adverſe* Proceedings were had.

LORD MANSFIELD, without hearing the other Counſel.

The Caſe of *Peart v. Weſtgarth* decides the Queſtion.

The *Inability* to receive the Benefit of the 43 *Eliz.* muſt *appear*.

In this Caſe, though there were *ſeparate* Overſeers from 1643 to 1703, yet all the *Townſhips*, during that Period, *jointly* relieved the Poor: And the Caſe cited ſhews, that an Acquieſcence for *forty Years*, will not alter the Law.

The Confirmation of the *ſeparate* Appointments in 1734, is alſo ſhewn to be no Authority: The Queſtion does not appear to have been raiſed: But *Peart v. Weſtgarth* is a *direct* Authority; and the Point was then very well conſidered: And there the Court thought, that the Policy of the *Statute* in the Time of *Car.* II. was a miſtaken one; and that it proceeded upon a wrong Principle, and that it was much better, for the Purpoſe of maintaining the Poor, to *enlarge* the Diſtricts, than to *narrow* them.

ASTON, WILLES, and ASHURST, *Juſtices*, concurring.

Rule abſolute; and Order of Seſſions, confirming The Appointments, quaſhed.

Where a *Pariſh* conſiſts of ſeveral *Townſhips*, ſome of which maintain their own Poor, and have *Overſeers* ſeparately appointed, the Court will grant a *Mandamus* for the ſeparate Appointment of *Overſeers* for the remaining *Townſhips*. Where ſuch a *Pariſh* has *immemorially* had *more* than *four* Overſeers, that is a Proof that they cannot have the Benefit of the 43 *Eliz.* and en-

THE KING *v.* SIR WATTS HORTON, *Baronet, and another, Mich.* 27 *Geo.* III. 1. *D.* and *E.* 374. A Rule had been obtained laſt Term, calling upon the *Defendants*, who were *Juſtices of the Peace* for the County of *Lancaſter*, to ſhew Cauſe why a *Mandamus* ſhould not iſſue, commanding them to appoint *two Overſeers* for the *Townſhip* of *Pilſworth* in the ſaid County.

The *Affidavits* grounding the Motion ſtated, that the *Pariſh* of *Middleton* conſiſts of *eight* ſeparate and diſtinct *Townſhips* or *Villages*, *to wit*, *Middleton*, *Thornham*, *Hopwood*, *Pilſworth*, *Birtle cum Bamford*, *Aſhworth*, *Ainſworth*, and *Great-Lever*; each of which has *immemorially* had a *ſeparate* CONSTABLE and Churchwarden.

That *Ainſworth* and *Great-Lever*, from Time *immemorial*, and *Aſhworth*, for about *ſeventy Years*, have had *ſeparate* Overſeers.

That before the Separation of *Aſhworth*, there was a *joint* Appointment of *ſix* Overſeers, for the *ſix* Townſhips; *one* out of *each*, who made a *general* Rate or Aſſeſſment, for the Poor of all the *ſix* Townſhips; and that each Overſeer acted within his own *Townſhip*; but that, at the End of the Year, there was a *general* Settlement of all Diſburſements, and the Expences borne equally by all.

That

That ſince the *Separation*, there has been a like *joint* Appointment of *five* Overſeers of the remaining *five* Townſhips; who have acted in the ſame Manner, as before the Separation.

titles each *Townſhip* to have ſeparate Overſeers. Wherever there is a *Conſtable*, there is a *Townſhip*.

That the *Pariſh* of *Middleton* could not reap the Benefit of the *Stat.* 43 *Eliz.* in relation to the Maintenance, Relief, and Government of its Poor, on Account of its Largeneſs, being *fourteen* Miles in Length and *ten* in Breadth, and alſo on Account of its *great* Population, and becauſe *three* out of the *eight* Townſhips, maintained their own reſpective Poor.

That the *Defendants* were requeſted at the laſt Annual Meeting, to appoint *two* Overſeers for the Townſhip of *Pilſworth*, which they refuſed.

Affidavits for the Defendants.

For the *Defendant's* Affidavits were read, which ſtated, that the *Pariſh* of *Middleton* conſiſts of *four* diſtinct and ſeparate Townſhips, *viz. Middleton*, *Aſhworth*, *Ainſworth*, and *Great-Lever*; and that the *Townſhip* of *Middleton* conſiſts of *five* ſeparate *Hamlets* or *Precincts*, and not ſeparate *Townſhips*.

That the Rates and Aſſeſſments had been made *generally* for the *Townſhip* of *Miadleton* at large, and not for *each* ſeparate Diſtrict; and that the Overſeer's Accounts had been made out in the ſame Manner.

Erſkine and *Shepherd* ſhewed Cauſe againſt the Rule, and contended, that in Order to lay a Ground for the Court to grant the *Mandamus*, it would be neceſſary to ſhew *two* Things;

Firſt, That this Diſtrict of *Pilſworth* is a *Townſhip*; and,

Secondly, That it cannot enjoy the benefit of the *Statute* 43 *Eliz.*

As to the *firſt*, it appears, that *Pilſworth* is only a *Hamlet*, which, with *four* others, conſtitutes the *Townſhip* of *Middleton*, and is *not* a *Townſhip* of itſelf; for it is ſtated, That the Overſeers have been appointed, and the Aſſeſſments made, from Time immemorial, *generally* for the *Townſhip* of *Middleton*, and not for the *five* Diſtricts *ſeparately*.

Secondly, It does not follow, that though *Pilſworth* ſhould be a *Townſhip*, yet that it muſt be ſeparated. The Affidavits ſhould have ſtated ſpecial Grounds, for the Court to ſee that *Pilſworth* was precluded from enjoying the benefit of the 43 *Eliz.* but they only ſtate generally, that the *Pariſh* of *Middleton*, of which it is a Part, cannot reap the Benefit of that *Statute*, without alledging any other Reaſons than thoſe of the *Largeneſs* and *Population* of the *Pariſh*; and that *three* Diſtricts had already been ſeparated from the other *five*.

In the Caſe of *Peart* and *Weſtgarth*, where the *Pariſh* was larger than in the preſent Inſtance, the *Court* did not think *that* a ſufficient Reaſon for dividing it: And as to the Extent of its Population, no additional Increaſe is ſtated from whence any *new* Inconvenience has ariſen: But, on the contrary, the Circumſtance of the *three* Townſhips having been ſeparated, affords a Reaſon for refuſing the Rule, as the Number of Inhabitants in the remaining Diſtricts muſt be conſiderably leſs, than that of the *whole Pariſh* before ſuch Separation took Place.

The *Townſhip* of *Middleton* has hitherto enjoyed the Benefit of the *Statute* of *Eliz.* without Interruption. And even in the Caſe of *Peart* and *Weſtgarth*, where there had been a contrary Uſage for forty Years under an Order of Seſſions, this *Court* was of Opinion, that, as the *Inability* of the *Pariſh* to reap the Benefit of the *Statute* of *Eliz.* did not appear, the Overſeers ought not to be appointed by virtue of the 13 & 14 *Car.* II. c. 12. In the Caſe of the *King v. Uttoxeter*, the ſame Rule was eſtabliſhed.

It is ſtated in the *Affidavits*, that each of the *five* Overſeers did the Duty of his particular Diſtrict; the ſame Reaſon was relied upon in the Caſe of the *King* againſt the Juſtices of *Middleſex*, where Overſeers had always been appointed for the *Pariſh* of *Kentiſh-Town*, which included *Pancras*; out of which latter Place *one* of the Overſeers had conſtantly been taken, who did the Duty of that particular Diſtrict. That it was urged as a Ground for dividing the *Pariſh*, but the Court ſaid, that it was only an internal Regulation, and refuſed the *Mandamus*.

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BEARCROFT and COCKELL, *contra*, contended, that where there is a *Conſtable*, there is neceſſarily a *Townſhip*. Here it is agreed on all Sides, that there is a *Conſtable*.

But what is deciſive in the preſent Caſe is, that it appears to have been always neceſſary for the *Pariſh* of *Middleton* to have *five* Overſeers, which is a Proof that it could not enjoy the Benefit of the 43 *Eliz.* which confines the Number to *four*.

They were then ſtopped by the Court.

ASHURST, *Juſtice*. This is a very plain Caſe. It has been argued againſt the Rule, that if the Court ſhould grant a *Mandamus* to appoint *ſeparate* Overſeers for the *Townſhip* of *Pilſworth*, one of the *five* remaining Diſtricts, it will neceſſarily follow, that the others will be intitled to the ſame Privilege. But that Argument applies equally the other Way; for as ſoon as the other *three* Townſhips were ſeparated, the remaining *five* had *a Right* to be ſo.

It is clear that the *Pariſh*, *as a Pariſh*, cannot have the Benefit of 43 *Eliz.* becauſe it has always had a greater Number of Overſeers than are allowed by that Act. Therefore, upon that Ground, as well as upon the former, that the *three* other *Townſhips* have had ſeparate Overſeers, I am of Opinion that the *five* remaining ones are alſo intitled to have them.

BULLER, *Juſtice*. The Parties applying for this Rule muſt neceſſarily make out *two* Points before they can ſucceed.—

Firſt, That this is a *Townſhip*. And,

Secondly, That it cannot have the Benefit of the 43 *Eliz.*

The *laſt* is the Point which has been moſt relied on: for, as to the *firſt*, it certainly is a *Townſhip*. There may be a *Conſtable* for a *larger* Diſtrict than a *Townſhip*, but not for a *ſmaller*. The Doubt in many of the Caſes, whether ſuch a Place was a *Townſhip* or not, has ariſen where there was *no* Conſtable.

Then the remaining Queſtion is, Whether the *Townſhip* of *Pilſworth* can have the Benefit of the 43 *Eliz.*? What is a deciſive Anſwer againſt that is, that the *three* other *Townſhips* have *ſeparate* Overſeers.

We muſt conſider what is meant by the *Benefit* of the *Statute*.

It is, that the *Pariſh* may maintain their own Poor, *as a Pariſh*; for unleſs they can do it, *as ſuch*, they cannot have the Benefit of the *Statute*. Now it is here ſtated, that *three* of the *Townſhips* maintain their own Poor; but unleſs they *all* join, they cannot reap the Benefit of the *Statute*.

It has been argued, that the Parties applying for the *Mandamus* ſhould have ſhewn ſpecial Reaſons to the Court, why they cannot have the Benefit of the *Statute*. But in fact they have done ſo: For they have ſtated the *Largeneſs* of the *Pariſh*, and its great Population, which Circumſtances are not denied by the other ſide.

Independent of theſe Reaſons, another Ground laid for the *Mandamus* is, that the *five* remaining *Townſhips* require *five* Overſeers: If from Neceſſity they muſt have *five* Overſeers to govern their Poor, that affords a ſtrong Argument to prove, that even if theſe *five* comprehended one *Pariſh*, independent of the other *three*, yet they could not enjoy the Benefit of the 43 *Eliz.* which allows only *four* Overſeers.

The Caſes that have been mentioned were all rightly decided, but they do not apply to the preſent. As to the Caſe of *Peart* and *Weſtgarth*, the *Pariſh* had enjoyed the Benefit of the *Statute* of *Elizabeth* for *one hundred* and *twenty* Years. After ſuch a Length of Time the *Court* ſaid, that they muſt have ſhewn to them ſome ſtrong Reaſons to induce them to believe, that it could not be continued, before they would appoint Overſeers in a different Manner for that pointed out by the *Statute* of *Elizabeth*, notwithſtanding any intervening Cuſtom for forty Years; but no ſufficient Reaſon appearing, they directed one joint Appointment for the whole Pariſh.

Next,

Next, as to the Caſe of the *King* againſt the Juſtices of *Middleſex*, it appeared moſt clearly, that the Pariſh of *Kentiſh-Town* could have the Benefit of the *Statute* of *Elizabeth*. There were two Overſeers appointed for the whole Pariſh, which was ſufficient to anſwer the Purpoſes of the Statute.

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Then, as to the Caſe of the *King* and *Uttoxeter*, the Anſwer to it is, that the Pariſh did not ſhew that they could not have the Benefit of the 43 *Eliz.*

By the Court.

Rule abſolute.

« WITHIN

" WITHIN THE SEVERAL AND RESPECTIVE TOWNSHIP AND VILLAGE;" *or,*

XI. *Whether a* TOWNSHIP *or* VILLAGE *ſhall be conſidered* AS *a* PARISH, *for the Purpoſe of maintaining its own Poor.*

In the Caſe of *Spittlefields* and *Stepney*, which *vide* at length *(Poſt) Title* REMOVAL.—The Pauper being ſettled at *Spittlefields*, (which is a ſeparate *Townſhip* in the Pariſh of *Stepney*,) was ſent by *Order* to the *Pariſh* of *Stepney*. And *Stepney* not having appealed, *the Court* held it concluſive upon *Stepney*, and ſaid, that Juſtices in their Orders, are not obliged to take Notice of the *Diviſions* of *Pariſhes* into *Hamlets* and *Townſhips*, which maintain their own Poor *ſeparately* and *diſtinctly*; and ſaid, that *Stepney* here might have ſhewn, upon an Appeal, that the Perſon did belong to the *Hamlet* of *Spittlefields*, which might have been a reaſonable Cauſe to diſcharge the *Order*; two *Hamlets* within a *Pariſh* are the ſame as two *Pariſhes*, yet *Churchwardens* are *Overſeers* of the Poor of the *whole Pariſh*, (though ſo divided,) and have a Superintendency over the whole *Hamlets* and Townſhips. *Vin.* Tit. *Removal*, 468.

A *Townſhip* or Subdiviſion of a *Pariſh*, ſhould be conſidered as a PARISH, for the Purpoſe of maintaining its own Poor.—And an Order of Juſtices calling it a PARISH, ſhall be a ſufficient Deſcription. Juſtices of the Peace are not obliged to take Notice of the Diviſions of Pariſhes into *Hamlets*.

THE KING *v.* KIRKBY-STEPHEN, *Inhabitants of. Trin.* 10 *Geo.* III. *Burr. S. C.* 664. Two Juſtices removed *W. B.* his Wife, and Children from the *Townſhip* of *Kirkby-Stephen*, in the County of *Weſtmorland*, to the *Townſhip* of *Wharton*, in the ſame County.

The Seſſions, on *Appeal*, quaſhed the *Order*, and ſtated the following Caſe:

That the PARISH of *Kirkby-Stephen*, conſiſts of *ten different Townſhips*, who maintain their Poor *reſpectively*, and have *ſeparate* Overſeers: Of which the ſaid *Townſhips* of KIRKBY-STEPHEN and WHARTON are *two*.

That the Pauper was originally ſettled in the ſaid *Townſhip* of WHARTON, and rented a Tenement of 22*l. per Annum*, in the ſaid *Townſhip* of WHARTON for *four* Years, and lived upon it for *three* Years and upwards; and in the *fourth* Year, went to the ſaid *Townſhip* of KIRKBY-STEPHEN, to aſſiſt his Siſter as a Shopkeeper; and *lodged* there with her *upwards* of *forty Days*; during which Time, he went daily to occupy and manage his Farm at WHARTON.

That he afterwards went to *Newport* in *Shropſhire*, where he married, and had five Children; and being likely to become chargeable there, *was removed*, by an *Order* of *two* Juſtices of the County of *Salop*.

That ſometime in *February* 1768, the Overſeers of *Newport* brought the *Pauper*, his Wife, &c. with the ſaid *Order*, to one *Petty*, then *Overſeer* of the *Townſhip* of *Kirkby-Stephen*; and delivered him the ſaid *Order*: Who ſaid, " that the *Pauper* did not belong to KIRKBY-STEPHEN, but to WHARTON;" and then went away, leaving the *Order* with the *Overſeer* of *Newport* and the *Pauper*.

A *Copy* of this *Order* was admitted in Evidence by the Seſſions, on Proof of Notice to the *Overſeers* of KIRKBY-STEPHEN, to produce the *Original*; and which appeared to be directed to the *Churchwardens* and *Overſeers*, &c. of the *Pariſh* of *Newport*, and to the Churchwardens and Overſeers,

ſeers, &c. of the *Pariſh* of KIRKBY-STEPHEN, and to each, &c. ſtating that, upon Complaint, &c. of the above *(Officers)* of the Pariſh of *Newport*, they (the ſaid Juſtices) did adjudge the lawful Settlement of the *Pauper* to be in the PARISH of *Kirkby-Stephen*, and accordingly *ordered* them to the ſaid PARISH of *Kirkby-Stephen*.

That about a Week after the Time he was brought to KIRKBY-STEPHEN, as aforeſaid, the *Pauper* went to WHARTON, and delivered the original *Order* removing him from *Newport* to the PARISH of KIRKBY-STEPHEN, to *John Hartwell*, who, he had been informed, was *Overſeer* of WHARTON, who ſaid "he would do nothing in it, till they had a Meeting;" and returned the *Order* to the *Pauper*.

That ſometime afterward the Pauper was applied to by *R. F.* an Inhabitant of WHARTON, for a *Copy* of the *Order of Removal:* which the *Pauper* wrote, and gave him; which was the Copy read in Evidence.

That the Pauper remained in KIRKBY-STEPHEN, and was maintained by his Siſter in the *Townſhip* of KIRKBY-STEPHEN for near a Year and a Half; when, his Siſter dying, he aſked Relief from the *Townſhip* of KIRKBY-STEPHEN.

It *did not* appear any *Appeal* was made againſt this *Order of Removal* from *Newport:* But the *Pauper* had that *Order* from the Time *Petty* left it; and was carried, together with it, by the *Overſeers* of the *Townſhip* of KIRKBY-STEPHEN, before Two Juſtices of the County of *Weſtmoreland*; where the *Order* was either left with the Juſtices, or delivered to *M. T.* one of the *Overſeers* of KIRKBY-STEPHEN; the *Pauper* not having afterwards ſeen it.

Mr. WALLACE for quaſhing the Order of Seſſions argued, that the *Pauper's* legal Settlement was in the *Townſhip* of WHARTON, where his Tenement and Farm lay: His *Houſe* was there, and not in the *Townſhip* of KIRKBY-STEPHEN. And the *Townſhip* of KIRKBY-STEPHEN are *not precluded*, by any Thing ſtated, from diſputing the *Pauper's* Settlement, with *another Townſhip* in the *ſame Pariſh*. The *Order* removes from *Newport* to the PARISH of *Kirkby-Stephen*; and the PARISH, it is true, have not appealed againſt it. But as the *Pariſh* at large conſiſts of *ſeveral Townſhips*, it may be too late to diſpute the Settlement being within the *Pariſh:* But there can be no pretence to ſay, that this ſhould fix it in *one* of its *Townſhips* rather than *another*, and preclude that *one* from diſputing it with *another*.

Mr. DUNNING and Mr. WILSON ſhewed Cauſe, on Behalf of the *Townſhip* of WHARTON. They agreed that the legal Settlement was in the *Townſhip* of KIRBY-STEPHEN; where the *Pauper* lodged, ſlept, and reſided above *forty* Days; not as a caſual Reſidence, but as a complete change of Reſidence, and from whence he was irremoveable all the Time he was there. He had left WHARTON and changed his Reſidence, which was once there. But, be that as it may, they inſiſted, that the *Townſhip* of KIRBY-STEPHEN was *bound and concluded* by the Order of Removal from NEWPORT to KIRBY-STEPHEN, unappealed from. This original *Order* calls KIRBY-STEPHEN "a *Pariſh*," though it is only a *Townſhip*: But that Miſtake will not vary the Law. They ought to have appealed: And upon an Appeal, they might have availed themſelves of that Miſtake, or of the Merits, if they had any. But not having appealed they are concluded, as againſt *every* Body, as againſt all the World.—And they cited *Viner Abridgm.* Tit. *Removal*, 468, as in point.

Vide Poſt REMOVAL.

Mr. WALLACE and Mr. MORTON *contra*, on the Behalf of the *Townſhip* of KIRKBY-STEPHEN, urged, That the *Paupers* were never *received* by the *Townſhip* of KIRKBY-STEPHEN; that the legal Settlement was clearly in WHARTON; that the merely lodging in KIRKBY-STEPHEN was a caſual Reſidence, and could give no Settlement; and that the *Townſhip* of KIRKBY-STEPHEN were not concluded by the not appealing from the *original* Order of Removal from *Newport*; the *Order* being directed to the Officers of the *Pariſh* of KIRKBY-STEPHEN.

BLACKSTONE, *Juſtice*. Thought this Caſe within the Rule mentioned in *Thackham* and *Findon*, (2 *Salk.* 459 *.) "That an Order unappealed from binds the *Pariſh* upon which it is made, till "another Settlement is gained." And he recited the Caſe of *Spitalfields* and *Bromley*.

* Poſt REMOVAL.

KIRKBY-STEPHEN v. WHARTON

LORD MANSFIELD. The original Order, made for the Removal from *Newport* to the PARISH of *Kirkby-Stephen*, muſt *mean* the *Townſhip* of *Kirkby-Stephen*. The *Townſhip* was *as* a *Pariſh*, for this Purpoſe of a Removal to it; the Poor within the *Pariſh* not being maintained by the *whole* Pariſh, but by the particular *Townſhips* to which they *reſpectively* belong.

The *Townſhip* of KIRKBY-STEPHEN ought, in this Caſe, to have appealed: They could not get rid of this *Order* any other Way. And, if they had appealed, the Truth muſt have appeared: and when the *Facts* had appeared to the Juſtices, upon the whole Truth being diſcloſed, the Paupers might, in the End of the Enquiry, have been ſent to WHARTON.

By the Court.

Rule diſcharged.

Order of Seſſions affirmed.

Sir JAMES BURROW obſerves, That this Caſe is elſewhere reported, ſtating the Court to have *quaſhed* the *Order of Seſſions*; but he aſſures that Reporter that he examined the Rule Book and found the Order "AFFIRMED."

XII. "*If*

XII. "*If in any Place there ſhall be no ſuch Nomination as is before appointed.*"

Theſe are the Words of the Statute 43 *Eliz.* c. 2, by which it is enacted,

Sect. 10. *That if in any Place there ſhall be no ſuch Nomination of* OVERSEERS *as is before appointed, every Juſtice of the* DIVISION *ſhall forfeit* 5*l. to the Poor of ſuch Place, to be levied by the* CHURCHWARDENS *and* OVERSEERS, *or One of them, by Diſtreſs, by Warrant from the Seſſions.*

"If there ſhall be no ſuch Nomination in *Eaſter-Week*, or within *One Month* after Eaſter. "For the Clauſe doth not ſuppoſe, that no *Overſeers at all* are appointed within ſuch *Place*, but only "not within ſuch *Time*; for the Penalty is required to be levied by the *Churchwardens and Overſeers*, "or One of them." 3. *Burn.* 330.

XIII. *Every Juſtice of the* DIVISION *ſhall forfeit* 5l.

Here DOCTOR BURN again obſerves, that "this proceeds upon the Suppoſition of the Juſtices being "obliged to *divide*; for in that Caſe the Appointment was to be by the Juſtices *in or near the Diviſion*, "and not otherwiſe: But now the Juſtices *at large* are all equally concerned; and therefore it ſeemeth, "that this *Penalty* cannot now be levied on any particular Juſtice. But if in any Place no *Overſeer* ſhall "be appointed, a *Mandamus* will go to the Juſtices at large, to compel them to appoint."

I have not been able to diſcover that any Attempt was ever made to levy this Penalty, ſo as to raiſe the Queſtion for a legal Determination; yet it ſhould ſeem reaſonable, that if Juſtices in or near any Pariſh, uſually acting there on ſuch Occaſions; and, more particularly, if properly required, ſhould refuſe or neglect, they would make themſelves liable to the Penalty within the Meaning of the Statute; which Conſtruction Courts of Juſtice would perhaps be inclined to adopt, rather than drive Pariſhes to the Neceſſity of expenſively ſuing out Writs of *Mandamus*, to compel Magiſtrates to do that which it was their Duty to have done without, under the Act of Parliament.

It now appearing,

FOR WHAT PLACES OVERSEERS SHALL BE APPOINTED;

IN WHAT NUMBER;

WHO MAY BE SO APPOINTED, AND HOW, IN THE ORDER APPOINTING THEM, THEY ARE TO BE DESCRIBED;

WHEN THEY ARE TO BE SO APPOINTED, *and*

BY WHOM AND HOW:

The preſent *eſtabliſhed* Form of which APPOINTMENT Doctor *Burn* has given in his very uſeful and excellent Work, already frequently referred to; the next Thing to be obſerved is,

XIV. "THE APPEAL AGAINST THE ORDER OF APPOINT-MENT."

By the 43d of *Eliz.* c. 2. ſect. 6. It is provided, *That if any Perſon or Perſons ſhall find themſelves grieved with any Seſs or Tax, or other Act done by the ſaid Churchwardens or other Perſons, or by the ſaid Juſtices of Peace; that then it ſhall be lawful for the Juſtices of Peace, at their general Quarter Seſſions, or the greater Number of them, to take ſuch Order therein, as to them ſhall be thought convenient, and the ſame to conclude and bind all the ſaid Parties.*

It was formerly doubted whether an *Appeal* from the *Order of Appointment* would lie; for,

In the QUEEN *v.* MOOR, *ante* 30. By HOLT, *Chief Juſtice*. By the *Stat.* 43 *Eliz.* Overſeers of the Poor muſt be *appointed* by the *Two next* Juſtices of the Peace; and an APPEAL *will not lie*; but EYRE, *Judge*, doubted.

Probably becauſe *an Appeal* was not given by the above *Statute* againſt the *appointment*, in *expreſs* Words, the *Chief Juſtice* ſo held and conceived it not to be within the general Words, "*or any other* "*Act.*"

However theſe Doubts have been long ſince removed, and the Juriſdiction of the Juſtices in Seſſions, to receive and determine ſuch Appeals, fully and in divers Caſes recognized by the Court of *King's Bench*. And in *the King* v. *Malden-Redbreſh*, (ante 46,) *the King* v. *Great Marlow*, (ibid.) and *the King* v. *Chalmerton*, (ibid.) that Court quaſhed Appointments made by the Juſtices in Seſſions on Appeal: the Seſſions having *no original* Juriſdiction to make ſuch Appointments. And it is ſaid, that the *Reaſon* is, becauſe the *Statute* gives a *Power* of *appealing* to the Seſſions againſt the *Order of Appointment*; which Power by this Means would be taken away.

Vide this Clauſe as to *Rate* more fully under that Head.

And in the 4th *Sect.* of the 17th *Geo.* 2. c. 38, intitled, "An Act for remedying ſome Defects "in the 43d *Eliz.* c. 2." it is enacted, "That in caſe any Perſon or Perſons ſhall find him, her, "or themſelves aggrieved by any Rate or Aſſeſſment, &c. or ſhall have any material Objection to ſuch "Account as aforeſaid; *or ſhall find him, her, or themſelves aggrieved by any Neglect, Act, or Thing* "*done or omitted* by the Churchwardens and Overſeers of the Poor, *or by any of his Majeſty's Juſtices* "*of the Peace; it ſhall and may be lawful for ſuch Perſon or Perſons, in any of the Caſes aforeſaid, giving* "*reaſonable Notice to the Churchwardens or Overſeers of the Poor of the Pariſh, Townſhip, or Place, to*

Appeal

" *Appeal to the next General or Quarter Seſſions of the Peace for the County, Riding, Diviſion, Corporation,* " *or Franchiſe, where ſuch Pariſh, Townſhip, or Place lies; and the Juſtices of the Peace there aſſembled,* " *are hereby authorized and required to receive ſuch Appeal, and to hear and finally determine the ſame;* " *but if it ſhall appear to the ſaid Juſtices, that reaſonable Notice was not given, then they ſhall adjourn* " *the ſaid Appeal to the next Quarter Seſſions, and then and there finally hear and determine the ſame;* " *and the ſaid Juſtices may Award and Order, to the Party for whom ſuch Appeal ſhall be determined,* " *reaſonable Coſts, in the ſame Manner that they are impowered to do in Caſe of Appeals concerning the* " *Settlement of Poor Perſons*; by an Act made in the Eighth and Ninth Years of King *William* the " Third, intitled, an Act for ſupplying ſome Defects in the Laws for the Relief of the Poor of this " Kingdom."

Appeal to the *next* Seſſions.

Sect. 5. Provided always, *That in all Corporations or Franchiſes, who have not* FOUR *Juſtices of the Peace, it ſhall and may be lawful for any Perſon or Perſons, in any of the Caſes aforeſaid, where an* APPEAL *is given by this Act, to* APPEAL, *if he or they ſhall think fit, to the next General or Quarter Seſſions of the Peace, for the* COUNTY, RIDING, *or* DIVISION, *wherein ſuch* CORPORATION *or* FRANCHISE *is ſituate.*

Proviſo for Corporations not having *four* Juſtices, to appeal to the Quarter Seſſions for the County.

N. B. The above Clauſe, in the 43 *Eliz.* leaves the *Appeal* at large, and may be had *at any Time*, not being reſtrained to the *next* or any other *particular* Seſſions *; and ſo it ſtill continues, notwithſtanding the above *Statute*, 17 *Geo.* 2. which directs the *Appeal* to be to the *next* Seſſions; but not in negative words, that it ſhall be to the *next* Seſſions, *and not otherwiſe*; ſo that *both* (as Doctor *Burn* obſerves) may ſeem to ſtand well together, and then the *Statute* 17 *Geo.* 2. will mean this, " That " the Appeal againſt any Thing done or omitted by Overſeers or Juſtices, in Caſes wherein no Appeal " is given by former Statutes, muſt be to the *next* Seſſions only," becauſe the Clauſe which gives the *Appeal*, limits it to ſuch *next* Seſſions: but in Caſes wherein an *Appeal* is given by former Statutes, ſuch Appeal may be to the *next* Seſſions according to this Clauſe, or may be according to the directions of ſuch former Statutes.

* *Sed Vide K. v. Butler*, ante 42. Court refuſed to quaſh an Appointment of Overſeers after their Year expired.

In Caſes where *no* Appeal is before given by *former* Statutes, it muſt be under this to the *next* Seſſions; otherwiſe either under this *Stat.* to the *next*, or under ſuch former Statute to any *other* Seſſions.

And in Truth many Acts of the *Churchwardens* and *Overſeers* may be ſo contrived, that they cannot be known before the *next* Seſſions, and it would give them a great Opportunity of Fraud, if they might be ſafe from concealing ſuch Practices, until the Time of appealing to the next Seſſions ſhould be expired. But then, if the *Appeal* be not under the 17 *Geo.* II. to the *next* Seſſions, there is no Power to award Coſts, under the 43 *Eliz.*

XV. *Who may appeal againſt ſuch Appointment.*

The *Pariſhioners*, as well as the the Perſons appointed for *Overſeers*, may appeal to the Seſſions, under 43 *Eliz.* againſt the Appointment.

In the KING *v.* FORREST *and others*, (*ante* 47,) an Appeal was made to the *Quarter-Seſſions* by *three* Perſons, *on Behalf of themſelves and others, Pariſhioners of*, &c. and a ſpecial Caſe received for the Opinion of the Court of *King's Bench*.

And, on Argument, it was objected (among other Things) that *no Body* but the Perſon who was *appointed* Overſeer, could *appeal* under 43 *Eliz.* c. 2. otherwiſe *every Pariſhioner* might appeal, and even upon ſeparate Grounds; but it never could have been the Intention of the Legiſlature to open ſuch a Door to Litigation.

LORD KENYON, *Chief Juſtice*. The Clauſe in the 43 *Eliz.* is conceived in the moſt general Terms. It enacts, "*that if any Perſon ſhall find himſelf aggrieved*, &c. *he may appeal*, &c." A Caſe may reaſonably be imagined to exiſt, in which the *Pariſhioners* would feel themſelves *aggrieved* by the *Appointment of Overſeers*, when we recollect the *enormous* Sums of Money which are received for the Relief of the Poor; as, for Inſtance, if the Magiſtrates were to appoint Perſons who were *inſolven*.

XVI. *Overſeer refuſing to take the Office.*

THE KING *v.* JONES, *Mich.* 14 *Geo.* II. Indictment againſt *Jones*, for not taking upon him the Office of *Overſeer of the Poor*.

Indictment lies againſt a Perſon refuſing to take upon him the Office of *Overſeer of the Poor*.

And on *Demurrer*—for the *Defendant*, it was objected—

Firſt, It appears he was *appointed* the *Officer*, and the *Statute* requires no *Oath*; therefore he becomes the *Officer*, and it is abſurd to ſay, he has not *taken* the Office; he is ſo by *Appointment*, without any Thing further; and the *Statute* lays a *Penalty* for Neglect of Duty, which they may proceed for; but not for refuſing the Office, as againſt a *Conſtable*, who muſt take an *Oath* before he is a compleat Officer.

Secondly, He is not indictable as for diſobeying the Juſtices *Order*, for they have only a bare Authority to *appoint*, which they have done, and he is an *Officer* by that *Appointment*.

Thirdly, This is an *Appointment* to execute for a Year, which the Juſtices have no Authority to make; but it ſhould be till another is appointed; for if *Eaſter* falls within the Year, new ones ought to be appointed; and it was ſo in fact here.

Fourthly, 'Tis ſaid, the Jurors *of* the King, not *for* the King.

The Solicitor General, contra.—I agree that no Indictment lies for this at *Common Law*; becauſe there is no ſuch Officer; but by the *Rules* of Common Law it will; for when a Statute requires a Thing to be done or not done, a Breach of the *Statute* is *indictable* by the *Rules* of Common Law; here is a Neglect and *Refuſal* to take the Office, which is *confeſſed* by the *Demurrer*. Sir J. Strange.

Statute 43 *Eliz.* c. 2. ſuppoſes the Perſon to take the Office, and neglects it; but the *Penalty* is not for *refuſing to take it*. The *Penalty* is but *twenty Shillings*, which cannot be ſuppoſed to be an Excuſe for not executing it. The *King v. Lane*, *Mich.* 5 *Geo.* II. *Indictment* lies for refuſing the Office of *Conſtable*, and ſaid, that the *Queen* againſt *Lacey*, in *Salk.* was miſtaken. The Penalty is not a Bar to other Proceedings. The Oath makes no Difference.

It is a proper Method to compel Obedience to Juſtices Orders, though the Authority is given by *Statute*, not by Common Law. The Juſtices can appoint only *for a Year*, and cannot till another is appointed. We could not proceed againſt him for *Negligence* in the Office, before he had taken the Office upon him.

LORD CHIEF JUSTICE. An *Appointment* for *a Year* is good; ſo held in the *King* againſt the Inhabitants of *Marlow* *, *Trin.* 13 *Geo.* I. Sir W. Lee.

* *Ante* 31.

As to the Jurors *of* the King, it would be well enough if it was ſo, but the Caption is *for* the King.

Jurors *of* the King, good in an Indictment, eſpecially if *for* the King in the Caption.

As to the principal Objection, it deſerves Conſideration.

The Statute ſays, "The Perſons ſo appointed ſhall be called Overſeers of the Poor."

Then the *Statute* gives Penalties for *Neglect*; now, if the Penalties only relate to the Neglect, then I think the *Refuſal* of *executing* the Office will be puniſhable another Way.

I ſee no Reaſon for a Diſtinction between a *Conſtable* and an *Overſeer*, for when the Statute *commands* a Thing, the refuſing to do it is by Law indictable, and I think the taking the *Oath* makes no Difference.

Mr. Juſtice PROBYN: They are *annual* Officers, and are to be choſen Officers *for a Year*; Non-acceptance of the Office is a Breach of the *Statute*, and therefore indictable.

The *Statute* ſays, *ſhall* be Overſeers, &c.

The

The *Oath* of *Conſtable* is no Part of his *Appointment*; but, if he refuſes taking the Oath, he is indictable.

It is a Contempt of the Juſtices Order, and as *ſuch* would be indictable.

Mr. Juſtice CHAPPLE agreed, and therefore

Judgment, *unleſs Cauſe*, for the King.

Q. Whether a Perſon appointed together with *four* others, for *Overſeers*, is indictable for *refuſing* the Office.

In an *anonymous* Caſe in *Viner*, *Tit.* POOR, 414. *(ante* 23,*)* it was moved to quaſh an Indictment againſt *B.* for that he, with *four* others, being appointed Overſeers of the Poor of ſuch a *Pariſh*, refuſed to take upon him that Office, &c. And,

By PARKER, *Chief Juſtice*; where more than *four* are added, they are not puniſhable by the Act, and they can only be added as *Aſſiſtants*.

POWELL, *Juſtice*. The Queſtion will be, whether the Words of the Act will be any more than *directory*, or a Limitation of their Authority. In moſt of the *Pariſhes* about *London*, there are more than *four*.—But the *Indictment* was quaſhed for another Fault.